

EXHIBIT A

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

AIR TRANSPORT ASSOCIATION OF
AMERICA, INC.,

Plaintiff,

Civil Action
No. 18-10651-ADB

v.

MAURA HEALEY,
In her official capacity as
Attorney General,
Commonwealth of Massachusetts,
Defendant.

Pages 970 - 1096

BEFORE THE HONORABLE ALLISON D. BURROUGHS
UNITED STATES DISTRICT JUDGE

BENCH TRIAL DAY 7
SEPTEMBER 20, 2022

UNITED STATES DISTRICT COURT
JOHN J. MOAKLEY U.S. COURTHOUSE
COURTROOM 17
ONE COURTHOUSE WAY
BOSTON, MA 02210

Kelly Mortellite, RMR, CRR
Kathleen Silva, RMR, CRR
Official Court Reporters
One Courthouse Way, Room 3200
Boston, MA 02210
mortellite.com

1 APPEARANCES:

2 FOR THE PLAINTIFF:

James R. Carroll
Alisha Quintana Nanda
Emily M. Jennings
Skadden, Arps, Slate, Meagher & Flom LLP
500 Boylston Street
Boston, MA 02116
617-573-4800
Email: James.Carroll@skadden.com
Email: Alisha.Nanda@skadden.com
Email: Emily.Jennings@skadden.com

8 FOR THE DEFENDANT:

Eric A. Haskell
Douglas S. Martland
Matthew Q. Berge
James Sweeney
Trini Gao
Attorney General's Office
18th Floor
One Ashburton Place
Boston, MA 02108
617-963-2062
Email: Eric.haskell@state.ma.us
Email: Douglas.martland@state.ma.us
Email: Matthew.berge@state.ma.us

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1 P R O C E E D I N G S

2 THE COURT: So we have the two motions. The
3 demonstratives from yesterday I'm going to allow in. It goes
4 to weight, not admissibility.

5 But let me ask you a question. Why are they missing
6 all these dates?

7 MR. HASKELL: We can speak to that if you want to hear
8 from us on that point, Your Honor.

9 THE COURT: Isn't it them turning the data over to
10 you?

11 MR. HASKELL: It is. We have a side of that story to
12 tell. I'll let them go first.

13 MS. NANDA: Well, Your Honor, to begin, I don't
14 represent American Airlines. The documents that were produced
15 pursuant to a third-party subpoena to American Airlines, my
16 understanding is that the documents were produced, timely
17 produced, within the range that was agreed upon after
18 meet-and-confers with the Attorney General. I'm not aware of
19 any motion to compel or any other type of motion practice
20 regarding the sufficiency of those productions. My
21 understanding is those reports just weren't included as
22 attachments in the emails that were produced in response to
23 that third-party subpoena. That's it.

24 MR. HASKELL: So relevant document discovery on this
25 point, Your Honor, happened really in two phases, and this

1 actually goes to two batches of documents that Mr. Zadmehran
2 spoke about yesterday. First, in February, March of this
3 year -- it was February, I think -- we received a big, big
4 chunk of documents from American Airlines pursuant to a third-
5 party subpoena. That subpoena was actually addressed to emails
6 and attachments in the custody of the testifying witnesses. So
7 we got like 40,000 pages of documents in response to that back
8 in February.

9 So we explained part of this in that motion practice
10 last month around taking the keeper's deposition. We sifted
11 through those documents. We saw these reports and said, Hey,
12 these are important. We want to get more of these. And so it
13 was probably the third week of June of this year we served
14 another third-party subpoena on American Airlines saying, with
15 respect to these reports, that Mr. Zadmehran testified he had
16 55 percent coverage on. What we asked for actually was every
17 one of those reports between 2014 and the present.

18 And the response we got back from American Airlines,
19 and American Airlines was represented on that by an attorney
20 named Chris Hollinger. He's sitting in the back there, the
21 gentleman with the beard. He also has an appearance in this
22 case on behalf A4A. So it's always been a little murky to us
23 which entity is speaking, but the response we got back from
24 American Airlines was we only made that report between 2019 and
25 2020 and we're going to give you all of them. We're going to

1 search for all of them and give you all of them.

2 So the return date -- and obviously we didn't file any
3 sort of motion to compel because the response was we're going
4 to give you everything we have. So the return date on that
5 subpoena was the third week of July. We received a whole bunch
6 of these flight service reports from American the third week of
7 July, transmitted them to Mr. Zadmehrani, and that's the second
8 batch that he testified about yesterday.

9 And then, when he worked on the summary charts, it
10 really happened in a bang-bang fashion over the course of about
11 two weeks at the end of July and beginning of August. When he
12 looked at the summary charts, he looked at them and said, Hey,
13 we're missing a bunch of dates here. We scratched our heads
14 and said, wait a minute, American was supposed to give us
15 everything. The problem was, though, Your Honor, we were up
16 against the clock. As you know, exhibit lists and exhibit
17 trial exhibit disclosures were due on Friday, August 5. So at
18 that point we kind of ran out the clock, and that's how we wind
19 up with 55 percent coverage.

20 Our view is that American said they were going to give
21 us all these documents. They ought to have given us all of
22 these documents. To the extent they did not give us all of
23 these documents, that should be on them, not on us. But that's
24 how it came to be.

25 I would also point out, Your Honor, you may not have

1 had a chance to review the testimony that we eventually took of
2 the American keeper to authenticate, lay the foundation for and
3 explain these documents. But what those witnesses said, there
4 was one for each of the three types of reports we're talking
5 about. What each of those witnesses said was these reports
6 represent a snapshot of data as of a certain point in time
7 that's kept in the database. That database goes back many,
8 many years, like up to ten years. And if you wanted to, we
9 could run a query and pull this data out of that database in
10 the span of a day at most. As a matter of fact, I think one of
11 the witnesses said we could do that within several seconds or
12 several minutes. So the data is out there, and that's our side
13 of the story.

14 THE COURT: I'm going to let it in, but obviously, you
15 know, its impact is weakened by what's missing.

16 MR. HASKELL: We're aware of that, Your Honor. And we
17 aren't thrilled with the way it worked out, but that's --

18 THE COURT: Well, I'll just say it's too late for this
19 case, but if you're running up against a time issue on a
20 deadline like that, all you have to do is ask me for an
21 extension and explain the circumstances. Getting ready for
22 trial, I'm flexible on that kind of stuff.

23 Then we still have one more motion for argument on.
24 That was about the demonstratives being admitted as exhibits.

25 MS. NANDA: Yes, Your Honor.

1 THE COURT: Do you want to do that now, or do you want
2 to do it -- do you want to get the expert on and off and then
3 do it today?

4 MR. HASKELL: We can do that now. Does that work?

5 MS. PRASAD: Good morning, Your Honor. We'd like to
6 submit Dr. Lee's charts that are at PD006, the demonstrative
7 that we used with him during his direct, at pages 5 through 18.
8 We believe they are admissible under Rule 1006.

9 As Your Honor is aware, there are certain requirements
10 that must be satisfied before a summary chart is admitted into
11 evidence. In fact, there are five requirements, Your Honor,
12 and we would argue that Dr. Lee's charts meet all of them.

13 The first one is that the source materials must be so
14 voluminous that they cannot be conveniently examined in court.
15 Your Honor, the underlying data for Dr. Lee's charts fall into
16 three distinct categories. One is the sick leave data that
17 Dr. Lee received directly from the carriers. Those are
18 voluminous records. They span several years across several
19 carriers.

20 The second category is data that Dr. Lee pulled from
21 the DOT databases. And, once again, those are incredibly
22 voluminous records that cannot be conveniently examined in
23 court. And then the third category is data that he pulled from
24 a database called OAG, which is the Official Airline Guide and,
25 once again, he pulled several data points from that database.

1 So the underlying records are voluminous, Your Honor.

2 The second requirement is that the underlying
3 documents should be independently admissible. And as I
4 mentioned, the three categories that Dr. Lee relied on, they
5 are independently admissible, Your Honor. The sick leave data,
6 those are business records of the carriers, and so they would
7 be admissible under 803.6. The DOT data, Your Honor, those are
8 public records since DOT is required to maintain those
9 databases under a mandate, a legal mandate. So they would be
10 admissible under 803.8. Then the database that I mentioned,
11 the Official Airline Guide, Your Honor, that database, the data
12 from that would be admissible under 803.17, which covers market
13 quotations, lists, directories or other compilations that are
14 generally relied on by experts in the field, and the OAG
15 database is indeed relied on by economists and aviation
16 experts. So that's the second requirement, Your Honor.

17 The third is that the charts and the underlying data
18 should have been reasonably made available to the opposing
19 party. Dr. Lee's charts and the underlying data were made
20 available to the Attorney General as part of his initial report
21 and rebuttal report that were disclosed in 2018 and 2019. In
22 fact, Appendix B of Dr. Lee's initial report and Appendix A of
23 Dr. Lee's rebuttal report actually provides a very
24 comprehensive list of documents that Dr. Lee relied on, and my
25 understanding is that when those reports were produced, the

1 underlying data was also produced simultaneously at that time
2 as well.

3 The fourth requirement, Your Honor, is that the charts
4 should be accurate and not prejudicial, and we do believe that
5 the charts are indeed accurate. They summarize the data
6 accurately and they are non-prejudicial. And in any event,
7 Your Honor, the Attorney General has had the opportunity to
8 sift through those charts and those data since at least 2018.
9 They've deposed Dr. Lee and, Your Honor, they also had a chance
10 to examine him in court about those charts. And the Attorney
11 General had the opportunity to put forth their own experts and
12 their own charts if they so wished to do so.

13 Then the last requirement, Your Honor, is that the
14 charts should be admitted through the testimony of someone who
15 supervised the preparation of those charts. And indeed Dr. Lee
16 is the person who supervised the preparation of those charts.
17 And as Your Honor found on Friday, he is a qualified expert and
18 he did create these charts with his team.

19 So those are the five requirements, Your Honor, and we
20 would argue that Dr. Lee's charts meets all of them and thus
21 they should be admitted under 1006.

22 THE COURT: Just curious, why do you want them
23 admitted versus just as demonstratives? They're still in the
24 record. They can be relied on. What's the end game?

25 MS. PRASAD: Your Honor, the charts would be helpful

1 to you, we believe, in making your decision, and that's really
2 the point of the rule, which is to create these charts that
3 summarize the voluminous data, and the charts can then be
4 admitted into evidence as substitutes for that voluminous
5 information.

6 So it's really a tool to help you, Your Honor,
7 respectfully, as you make your decision, and so that's why I
8 would like to admit them into evidence.

9 THE COURT: What's the objection?

10 MR. MARTLAND: Your Honor, the objection here is that
11 they have not either authenticated the underlying records or
12 established a foundation for them as business records of the
13 respective airlines. The airlines, or the plaintiff here, had
14 ample opportunity to examine any of the multiple airline
15 witnesses that testified in this case regarding both the
16 authentication and the foundation of these records as business
17 records and specifically failed to do so.

18 These witnesses did not describe how and when the
19 records were made, whether they are kept in the regular course
20 of business, whether the records were a regular part of the
21 company's business, or even the method of preparation or the
22 trustworthiness of the record. In fact, the testimony that
23 they put forward in some cases was that their own records were
24 not trustworthy. So we think all of those reasons where they
25 had ample opportunity with the multiple airline witnesses that

1 testified and failed to pursue that line of inquiry, and again
2 had an opportunity with Dr. Lee to potentially provide that
3 foundation and again failed to do so, is reason to deny the
4 motion and admit them into evidence.

5 I'll also add, Your Honor, that there's a significant
6 prejudice here to admitting these records. The airlines or the
7 plaintiff was on notice as to when exhibits in this case needed
8 to be disclosed. That was at some point in early August, as
9 Attorney Haskell was just saying. They've had all this
10 information since well before summary judgment, and there was
11 no reason why they had to wait until the last day of their
12 testimony at trial to seek to submit them into evidence. We
13 are prejudiced because we did not have an opportunity to pursue
14 that type of inquiry with any of the airline witnesses. Had we
15 known that, we may well have made a different decision about
16 how our cross-examinations would have gone.

17 Similarly, we had no notice that they would be
18 introducing these through the testimony of Dr. Lee and, again,
19 if we had notice back in August, over a month ago, month and a
20 half now, we may have made different decisions about how we
21 would have pursued the cross-examination of Dr. Lee.

22 THE COURT: Same question to you. What difference
23 does it make?

24 MR. MARTLAND: Again, Your Honor, they're offering
25 these charts for the truth of the matter asserted. We don't

1 think they should be in evidence. We did not oppose them being
2 submitted as chalks, and that's where we stand.

3 I'll also add just two other points, that several of
4 the charts, although it sounds like they're narrowing some of
5 the charts, that they're seeking to submit just the charts
6 themselves as opposed to the PowerPoints containing Dr. Lee's
7 opinion, some of the charts are a little argumentative in terms
8 of labeling and titling them as corrections to testimony that
9 hasn't even been given yet. I'd point the Court specifically
10 to page 6. Mr. Akins is not testifying until today. There's
11 also labeling as things like "Typical" on page 12 of the
12 document.

13 THE COURT: Okay. Which -- tell me, now that he's
14 raised that, tell me specifically which charts you're trying to
15 move in.

16 MS. PRASAD: Yes, Your Honor, so PD006, starting at
17 page 5, page 5 through page 18.

18 THE COURT: All right. What about authenticating
19 them?

20 MS. PRASAD: So, Your Honor, I'd like to address that.
21 The sick leave data that counsel talked about, similar sick
22 leave records appear on plaintiff's exhibit list, Your Honor.
23 And when those exhibit lists were exchanged, counsel raised no
24 hearsay objections to that data. So that would be one.

25 As for the other two categories of data, Your Honor,

1 the DOT records and the OAG database, the Attorney General's
2 experts themselves rely on those data sources in their reports
3 as well, particularly the DOT data. So that would be that,
4 Your Honor. We believe that those records don't have a hearsay
5 objection. Similar records received no hearsay objection.

6 THE COURT: Hold on. Hearsay is different than
7 authentication.

8 MS. PRASAD: Right. Agreed, Your Honor.

9 THE COURT: Let me think about that. Mr. Hollinger,
10 while I have you here, the thing with these American Airlines
11 records is bothering me because I'm letting them in for what
12 they're worth, but AA is part of -- American Airlines is part
13 of A4A, and it seems like by not producing those documents
14 you're prejudicing them to their advantage and it bothers me.

15 MR. HOLLINGER: Your Honor, we, and I personally know
16 how much time American spent to track down as many of these
17 reports as we could. Mr. Haskell states that we said we would
18 produce all the reports. We said we'd produce all the reports
19 we could find.

20 The reports have been discontinued at least one or two
21 years ago. In response to the subpoena, we went back and
22 consulted other sources at American, other than the initial
23 email custodians with respect to whom the first batch of
24 reports were located, and we found additional reports, and we
25 produced them.

1 But the main reason why we didn't produce, quote, "all
2 of the reports" is because we don't have a master repository of
3 every single report within a period of time. This is a report
4 that has been discontinued, and we went back and looked again
5 in response to the subpoena to find as many of those reports as
6 we could and we produced all the ones we could find.

7 THE COURT: It seems odd that an operation like
8 American Airlines doesn't have a central repository for every
9 report that's prepared basically on a daily basis.

10 MR. HOLLINGER: It was prepared on a daily basis for a
11 short period of time. I can't speak to whether or not American
12 Airlines maintains a master repository of every single report
13 for every single day for 10 years or 15 years even though those
14 reports are no longer produced. I mean, the report was
15 discontinued. It's not like this is a report that is
16 continuing to be produced to this day. It was discontinued for
17 reasons that, frankly, the Attorney General could have asked
18 Mr. Blaska. I honestly don't know whether they did, but they
19 could have. He's the person who has been identified as the
20 person who could speak to why the reports were discontinued,
21 and he was identified as such in one of the recordkeeper
22 depositions that Mr. Haskell has referred to.

23 But at no time did the Attorney General say, Well,
24 hey, can you recreate reports? Can you, you know, do something
25 else to, quote, "fill in the gaps"? We looked for every single

1 report we could find, and we produced every single report we
2 could find.

3 THE COURT: Mr. Haskell is standing up.

4 MR. HASKELL: I am, Your Honor. And I guess what I
5 want to emphasize is that these recordkeeper depositions that
6 we took, I guess it was a couple of weeks ago, it was the 1st
7 of September, 2nd of September, we learned about a distinction
8 between the reports which are a snapshot of the data as it
9 exists at the time the report is run on a daily basis and the
10 database that contains that data, and what each of the
11 deponents indicated is that that database is there. It's kept
12 for a very long time. It's easy to access. American goes to
13 that data frequently and relies on it to help them improve
14 their operation. And so even if we were to take Mr. Hollinger
15 at his word that the reports can't be found, the data
16 underlying the reports is plainly out there.

17 And I guess what we would say, Your Honor, is that if
18 the Court is interested in getting this information and
19 believes it would be helpful to its decision, you know, we're
20 certainly amenable to doing what it takes, with leave of court,
21 to get the information. Frankly, everything we've seen in this
22 data from American Airlines indicates that it's going to be
23 extremely probative and it's also going to be in a great deal
24 of tension with the testimony you heard from American's
25 management last week.

1 THE COURT: So you asked for the reports but you never
2 asked for the data.

3 MR. HASKELL: That's right. Frankly, because at the
4 time we served that subpoena, we didn't understand the
5 relationship between the data and the reports.

6 I should mention, Your Honor, the subpoena that we
7 served, as well as the responses we received from American, are
8 already in the record. They were attached to -- I think I made
9 out an affidavit in connection with the opposition to the
10 motion in limine that we filed last week or two weeks ago, I
11 guess. But that's already in the record, if you'd like to
12 consult it directly.

13 Mr. HOLLINGER: I just want to emphasize, nor did the
14 Attorney General request that we do anything once they were
15 able to determine that some of these dates of these reports
16 were, quote-unquote, "missing."

17 Now, I understand the time constraints of trials and
18 things like that, but it's not accurate for Mr. Haskell to
19 suggest that somehow or another American Airlines is hiding
20 reports or something like that. They could have -- at any time
21 they could have said, Oh, you know, if the data is still there,
22 what about A, B and C? And they didn't.

23 Again, many of these reports were produced as early as
24 the February and March time frame. They were originally
25 produced and located because of mutually agreed email search

1 terms and search results mand at no time have they asked us to
2 do anything other than the produce the actual reports we could
3 find, and we produced all of them.

4 THE COURT: I'm not trying to assign blame. I mean,
5 it seems like -- I mean, if one is looking to assign blame, it
6 could be spread around pretty well. On the other hand,
7 everybody more or less kind of did what they were supposed to
8 do at each step along the way. But what I am wondering is if
9 it makes sense to try to get a more complete dataset before we
10 make a decision in this case. Now, they want it. You --

11 MS. NANDA: I would object to that, Your Honor. We
12 are in day seven of trial.

13 THE COURT: I get it.

14 MS. NANDA: It's highly prejudicial to our case.

15 THE COURT: But they're part of you. I mean, you want
16 me to make a decision on incomplete data that's incomplete
17 because --

18 MS. NANDA: I'm not asking that you make a decision on
19 incomplete data at all. We've put forth data in this case.
20 We've put forward the testimony of Mark Blaska and the data
21 that he put forth. We have data that we put forth through our
22 expert Darin Lee. We're not relying on this other data. This
23 is in their defense.

24 Now, to open up discovery on such a major issue in the
25 middle of a trial when we've already rested our case is wildly

1 prejudicial. I mean, we would have to open up everything
2 again. We don't know what the data says. And again, we have
3 not relied on this data in our case in chief.

4 So to say that somehow data that they've raised in
5 defense, which is incomplete, that somehow they're asking for a
6 do-over to start and open up discovery again is just I think a
7 bridge too far.

8 THE COURT: I don't know that I would do it because
9 it's late in the game. But it doesn't open up everything.
10 Either -- you've undermined their data because it's incomplete.
11 And it's incomplete -- I'm not casting blame on it, but the
12 control of that data is on your side of the V. And it doesn't
13 open up everything because you're not going to tell me that
14 you're going to change your case based on what the data says,
15 right? Either this is a substantial disruption or it isn't.

16 MS. NANDA: There may be further discovery that may
17 need to be taking place and we may need to call witnesses again
18 with respect to those data sources. And we'll have to --

19 THE COURT: I disagree with that. I'll take it that
20 it's late in the day and I'm not sure I want to open it up and
21 keep the evidence open on something that could have been raised
22 before trial. But I'm not buying the rest of it.

23 This is the -- they've already put in the data.
24 They've told you what they're using it for. They have an
25 expert. They have charts. All they would do is fill in the

1 gaps in the charts.

2 MS. NANDA: Your Honor, they never even told us about
3 the gaps in the chart. We were given the charts as continuous
4 date ranges with averages. We only learned about the gaps in
5 the chart from doing all of the reconciliation work that you
6 saw in the demonstratives. They never put that information in
7 the exhibits to their charts. We deposed Mr. Zadmehran on his
8 charts, and he said at his deposition that he couldn't identify
9 the days of the missing reports.

10 I mean, in terms of hiding the ball, they have hidden
11 the ball with respect to these exhibits. And it was not until
12 we did a complete audit of all of these documents that we
13 realized that those charts were missing many, many days of
14 data. For whatever reason, they are missing data.

15 So the only point we're trying to make is that they
16 are what they are. They summarize what they summarize, which
17 are certain days within those date ranges. And that's where we
18 are, Your Honor. And it's been that way for quite a long time.
19 So on day seven, to suggest that we go to primary source data,
20 you know, primary source data, not even these reports, we don't
21 even know what they would say or how long it would take to do
22 that in the middle of trial.

23 THE COURT: Minutes. He says minutes. Maybe seconds.

24 MS. NANDA: It is --

25 MR. HASKELL: That's American's testimony, Your Honor.

1 MS. NANDA: I can assure you that that is not true,
2 that to pull data, you always have to do a quality review.
3 Even his own witness had to do quite a lot of quality review
4 when just reviewing the third-party vendors' inputting of data
5 from the PDFs into, you know, Excel spreadsheets. So I think
6 that is hyperbole to say it is seconds, Your Honor.

7 THE COURT: All right. It's late in the game to add
8 more data. Everybody could have taken steps to complete the
9 data before. I'm not going to order it supplemented at this
10 point, but the whole thing sort of bugs me. It leaves a bad
11 taste, let me say that.

12 I'll take the other motion under advisement. I just
13 want to go back and look at those charts specifically again.

14 Why don't you go ahead and call your witness,
15 Mr. Haskell.

16 MS. PRASAD: Thank you, Your Honor.

17 MR. HASKELL: So the Attorney General calls Daniel
18 Akins.

19 DANIEL AKINS, Sworn

20 THE CLERK: Would you please state your name and spell
21 your last name for the record.

22 THE WITNESS: Sure. My name is Daniel W. Akins,
23 A-k-i-n-s.

24 DIRECT EXAMINATION BY MR. HASKELL:

25 Q. Good morning, Mr. Akins.

1 A. Good morning.

2 Q. Can I ask you to please tell the court what you do for a
3 living.

4 A. I'm an air transport economist, and I work as a
5 professional consultant in the air transport industry.

6 Q. For whom do you work?

7 A. I'm self-employed, and I also have another partnership in
8 Colorado. It's an LLC. And I'm also president of a nonprofit,
9 the Airline Workforce Alliance.

10 Q. And can I ask you, Mr. Akins, to please pull the
11 microphone closer to you and keep your voice up.

12 A. Sure.

13 Q. The partnership that you mentioned, what's the name of
14 that outfit?

15 A. Flightpath Economics.

16 Q. And the nonprofit that you mentioned, can you speak a bit
17 about what that is and what it does?

18 A. Sure. I think we've all heard about the problems plaguing
19 the air transport industry recently, but even before the
20 pandemic there was a shortage of skilled technicians, which are
21 mechanics that have licenses at the airlines to service
22 airplanes. And there's also a dire need for qualified pilots
23 that are needed for the expansion and retirement of pilots in
24 the airline business.

25 I started that business. We had several airlines

1 supporting it. We had airports supporting it. And with my 35
2 years of experience in the business, I knew what was coming.
3 It's here now. And since 2014, I've tried to get legislation
4 and work with flight schools and airlines to try and develop
5 programs to encourage, support financially, as well as qualify
6 mechanics and pilots to serve in the air transport business.

7 Q. Mr. Akins, where were you educated?

8 A. I got a post-graduate degree from the London School of
9 Economists in air transport economics in 2003. Prior to that I
10 got a BA from a small school in Minnesota called Gustavus
11 Adolphus College.

12 Q. You mentioned a moment ago, Mr. Akins, your 35 years
13 experience with respect to the airline industry. What types of
14 matters have you worked on during those 35 years?

15 A. I wouldn't call them matters. They're more projects.
16 This is a matter. The projects I've worked on have included
17 projects for airlines, projects for airports, airframe
18 manufacturers, labor unions, and affiliated companies related
19 to the air transport industry.

20 Q. And let me break that down and start first with labor
21 unions. Could you describe the type of projects that you've
22 worked with labor unions on?

23 A. Sure. I think in the past 20 years primarily that I've
24 worked with labor unions, I've worked on a number of
25 bankruptcies as an adviser to labor unions and advisers to

1 creditors committees in those bankruptcies. And they include
2 pretty much every airline bankruptcy, which includes almost
3 every airline. And most unions have gone through some type of
4 restructuring as a result of 9/11 or thereafter.

5 I've worked with labor unions primarily recently in
6 supporting contract negotiations, which involves preparing
7 estimates of costs and operational impacts of changes to
8 collective bargaining agreements on behalf of unions nationwide
9 that represent pilots, flight attendants, mechanics, ramp
10 provisioning agents, dispatchers, people that work in
11 mechanical stores, people that work with simulators, both as
12 technicians and instructors. So it kind of covers soup to nuts
13 labor in the airline business.

14 Q. And you also mentioned a moment ago that you have been
15 retained by airlines for certain projects. Can you speak about
16 those as well?

17 A. Right. Well, there's a couple of different buckets. Back
18 in the day, the U.S. DOT would negotiate with foreign countries
19 under bilateral agreements to provide air service expansion
20 between the two countries. That protocol, the international
21 bilateral agreements have gone away. We operate now under free
22 skies which allows a more liberal expansion of air services
23 between countries, but back in the day I worked for carriers
24 such as American and Southern Air Transport. There was a
25 company called American International Airways, which was a

1 cargo company, in which I supported economic and operational
2 data efforts to prove to the United States DOT that those
3 carriers best represented American interests in expanding to
4 foreign countries. That was done mostly in the '90s.

5 I've worked with Air Canada in a matter against their
6 pilot union, which at the time was called ACPA. I've worked
7 with Lufthansa to expand service to the United States. I've
8 worked with Lufthansa as well in an endeavor in the early '90s
9 with a financial investor in California called Marvin Davis to
10 potentially purchase Continental Airlines. I've worked on a
11 number of other matters for large and small airlines with the
12 AWA pilot endeavors.

13 Q. I'm sorry, the AWA is?

14 A. AWA is my nonprofit, Aviation Workforce Alliance.

15 Q. Got it. You also mentioned, Mr. Akins, that you've worked
16 on projects on behalf of airports?

17 A. Yes.

18 Q. Can you speak a bit about that experience?

19 A. Sure. I worked on behalf of a number of large airports,
20 and it's sort of a fact of the business of airports that they
21 actually market themselves to airlines. They want service to
22 be provided to various corridors of interest either in the
23 United States or internationally.

24 So I've worked with Metropolitan Washington Airports
25 Authority for a number of years. I've worked with the City of

1 Nashville, worked with the City of Jacksonville and number of
2 other airport authorities to develop new routes and services
3 and perhaps new carriers to serve their markets.

4 Q. Mr. Akins, have you done work on behalf of the United
5 States Postal Service?

6 A. Yes. There was sort of an odd project that popped up. I
7 was heavily involved in the cargo industry. The United States
8 Postal Service was proffering its overnight express business to
9 be served by FedEx rather than by postal service contracted
10 aircraft, and I did the financial and operational analysis for
11 the U.S. Postal Service of the transfer of its overnight
12 network of packages to a third-party vendor, which was FedEx.
13 And that's at the time when FedEx posted all of their purple
14 boxes outside of every U.S. Postal Service as a part of that
15 deal.

16 Q. Have you also been involved, Mr. Akins, with -- let me
17 ask, the payroll support program --

18 A. Sure.

19 Q. -- is that something of which you're aware?

20 A. Sure.

21 Q. What is the payroll support program?

22 A. Sure. It's the program that provided funds for airlines
23 to pay for the payrolls and benefits of their employees during
24 COVID. It came in three tranches under three different laws.
25 And I was, you know, proudly the one who developed the basis

1 for those payments, which was based on financial data that's
2 commonly available and is available from the U.S. DOT filed by
3 the carriers which represented the cost of full-time employment
4 and benefits to airline employees across the industry. And
5 they utilize that analysis to put in place the law which
6 provided about \$55 billion in government service support for
7 airline workers during the pandemic.

8 Q. And around when did that work take place?

9 A. It took place in, I want to say, late March.

10 Q. Of?

11 A. 2020.

12 Q. So towards the beginning of the coronavirus pandemic?

13 A. Right. And there was a very big concern in the airline
14 business, as well as generally in the airline industry, as well
15 as government, that we were seeing something that was worse in
16 terms of the impact on the airline business than all of the
17 other maladies that have occurred in history, bigger than 9/11,
18 bigger than SARS, bigger than the global financial meltdown.
19 All at once, within three or four days, we lost 90 percent of
20 the demand, and that's never happened before.

21 For comparison, 9/11 was like a 15 percent hit on revenue.
22 This was a 90 percent hit or greater.

23 Q. 15, one-five?

24 A. One-five.

25 Q. Compared to 90?

1 A. Right.

2 Q. Have you testified in court as an expert before,
3 Mr. Akins?

4 A. Yes.

5 Q. About how many times?

6 A. I would say about a dozen.

7 Q. That's over the course of your 35-year career?

8 A. Yes.

9 Q. And what kinds of matters have you addressed in those
10 previous expert testimony projects?

11 A. A variety of things. A lot of it involved Chapter 11
12 proceedings where I testified on behalf of either members of
13 the creditors committee or labor unions. Some matters involved
14 pilot wage loss disputes. There were a couple of instances I
15 testified on behalf of Continental in U.S. District Court in
16 Fort Worth on behalf of Continental Airlines to allow them to
17 expand services at Dallas Love Field, which Southwest was
18 contesting at the time. But most of the matters involved
19 either airlines, airports or labor unions.

20 Q. And going back to the work you've done relative to
21 negotiation of collective bargaining agreements, about how many
22 such negotiations have you been involved in in doing work for?

23 A. I don't want to say countless, but it's probably several
24 hundred.

25 Q. And have some of those involved the carriers that are here

1 in court today through A4A?

2 A. Yes.

3 Q. United, Alaska, American, Southwest, JetBlue and -- I
4 forget.

5 A. Delta.

6 Q. Thank you.

7 A. Yes, all of them.

8 Q. All of them?

9 A. All of them at some point in my career, yes.

10 Q. Okay.

11 MR. HASKELL: At this time, Your Honor, we would
12 tender Mr. Akins as an expert in the economics and operations
13 of the airline industry.

14 MR. CARROLL: No objection, Your Honor.

15 THE COURT: All right. He's qualified as an expert
16 and can testify as such.

17 MR. HASKELL: Thank you.

18 Q. So Mr. Akins, I'd like to start by talking about
19 operations in the airline industry and first start by talking
20 about on-time performance.

21 A. Sure.

22 Q. In your experience, is on-time performance something that
23 is important to airlines?

24 A. It's important to airlines, and it's important to their
25 customers.

1 Q. And how do airlines measure on-time performance of their
2 flights?

3 A. Well, we know internally that airlines such as American
4 measure a very discrete level of on-time performance day to
5 day, month to month for various aspects of their operation. I
6 think what we're talking about is publicly available
7 measurements of airline performance which really came to
8 fruition in the early 2000s when the government responded to
9 consumer complaints about the lack of information regarding
10 flight integrity, that is the on-time nature of certain
11 flights. And now we all benefit from that collection of data
12 by the U.S. Department of Transportation that every time we
13 file for a flight record to find out if the flight operates on
14 time, it will generally show a history of that flight's
15 operating record in terms of the performance, whether it's been
16 on time 90 percent or whether it's been canceled 10 percent of
17 the time.

18 So the original intent was to put together back in the
19 early 2000s a book that came out each month that would rank
20 each airlines' performance in terms of on-time delivery of
21 their product. And it had various buckets, and the DOT and FAA
22 determined that the best bucket for impactful delays were
23 delays above 15 minutes. And then there were other buckets
24 above 15 minutes, but on time according to the official
25 government statistics are below 15 minutes delay.

1 Q. So I want to unpack a couple of aspects of what you said
2 there.

3 So airlines report to the federal government on-time
4 performance at the flight level?

5 A. Yes.

6 Q. And is that pursuant to law?

7 A. Yes.

8 MR. HASKELL: Okay. And actually at this point if we
9 can put up on the screen Defendant's Demonstrative 8, and I'll
10 hand out hard copies as well.

11 THE CLERK: I have to connect you. What are you
12 hooked into?

13 MR. HASKELL: No luck. Let's proceed with the paper
14 copy then.

15 Q. So Mr. Akins, the demonstrative that I just put in front
16 of you, have you seen that before?

17 A. Yes.

18 Q. And fair to say that this image we're looking at is
19 something that you prepared in connection with your opinion in
20 this case?

21 A. Yes, it is.

22 Q. And so can you explain to us what we're looking at here?

23 A. Sure. Underneath the requirements for the airlines to
24 submit flight information, all flight information, whether it's
25 delayed or not, the U.S. Department of Transportation also

1 requires them to file the delays as attributable to five
2 different types of causes that are determined by the airline
3 but mostly are in the five buckets that we see in the left,
4 which include air carrier, extreme weather, the national
5 aviation system, which is really the air traffic control
6 system, late-arriving aircraft, and security, which is really
7 airport clearance through TSA.

8 Q. And I see that the graphic seems to break out the first of
9 those five buckets, the air carrier bucket, into subcategories.
10 Can you speak about what we're looking at there?

11 A. Sure. The airlines are instructed to file as air
12 carrier -- there we go -- air carrier-related delays those
13 issues which are represented by the list of 42 items on the
14 right-hand side. So of the five categories, large categories
15 of delay causes, there is a 42-part breakdown of air
16 carrier-caused delays.

17 Q. And so I guess I want to be clear here. What is it that
18 an airline reports to the U.S. DOT? Is it just the big bucket
19 air carrier-related delays, or do they report each of these 42
20 subcategories to the DOT as well?

21 A. Just the five major categories.

22 Q. Okay. In your experience, Mr. Akins, do airlines commonly
23 track causes for delays internally in a more fine-grained
24 fashion than these five big categories that they're required to
25 report to the DOT?

1 A. Yes.

2 Q. Okay. And just so we have this on the record, you've
3 spoken about the components of category one, air carrier
4 delays. Is that sometimes referred to as carrier-caused
5 delays?

6 A. Yes.

7 Q. Okay. The second bucket, extreme weather, what kind of
8 delays would be attributed to that bucket?

9 A. Those would be the events that occur in the atmosphere,
10 either at the airport, in flight or on arrival which have
11 affected, according to the airline, the arrival or departure
12 time of a flight.

13 Q. And the third bucket for national aviation system, what
14 kind of delays are attributed to that?

15 A. Those are the types of delays that probably all of us
16 experience when there's metering of the air traffic control
17 system because of congestion in the airspace.

18 Q. And the fourth bucket, late-arriving aircraft?

19 A. That's just generally airplanes that have arrived late
20 that have impacted the departure of the next flight.

21 Q. And that's a separate category of delays that airlines are
22 required to report to DOT?

23 A. Right.

24 Q. Is there any subcategorization there, or is that
25 regardless of the reason why an aircraft arrived late?

1 A. There's nothing filed publicly about late-arriving
2 aircraft. There may be something internally because obviously
3 there's a cause for the late-arriving aircraft, so the airlines
4 are determining the impact of what they'd consider to be the
5 cause of a delay being late-arriving aircraft, for any cause.

6 Q. And the fifth category or bucket that airlines are
7 required to report to the federal government security, what
8 kind of delays might fall into that bucket?

9 A. That could be delays related to either flight crew or
10 passengers transgressing through the TSA security system at the
11 airport. And that tends to be a nonfactor. That's less than
12 say 1 or 2 percent.

13 THE COURT: You guys, do me a favor. Can you blow up
14 that list on the right? My thing is blurry.

15 MR. HASKELL: It may be --

16 THE COURT: The copy is blurry but --

17 THE WITNESS: I could read, Your Honor, if you'd like,
18 what I can make out.

19 THE COURT: I just wanted it a little bigger.

20 A. It's pretty much everything, even number 5, awaiting
21 alcohol, awaiting gate spares, baggage loading, cabin
22 servicing, cargo loading, catering, computer, something,
23 carrier equipment. It's everything within the function of the
24 airline that could go wrong and does go wrong to delay flights
25 on occasion.

1 THE COURT: So the reason I wanted to see it, can you
2 just -- why is late-arriving aircraft separate? Why is that
3 not under air carrier?

4 THE WITNESS: Because it could derive for a different
5 reason, and I'm not sure why that's in there either because it
6 seems to me that it's arriving late because of some cause. And
7 all I can think of is, when they made this, they didn't really
8 think through that that's going to be connected to something
9 else. Because aircraft themselves don't arrive late. There's
10 a reason. And it's weather, it's air traffic control. It's
11 one of these 42 items. And so it's a little bit of a gray
12 area. It's not too big of a chunk of the explanation of
13 delays, but it is a conundrum for me as well.

14 Q. And again, Mr. Akins, just to be clear, the five big
15 categories we're talking about here, those are proscribed by
16 the federal government?

17 A. Yes.

18 Q. And so when you talk about "they" making a decision to
19 treat late-arriving aircraft as a separated category, the
20 "they" refers to whom?

21 A. The DOT and Congress effectively, that this probably
22 looked like a good list sitting around the table in Washington
23 in 2002. To create this new report they probably had, you
24 know, several departments and people's hands in it. But when
25 you actually break it down and look at it, the late-arriving

1 aircraft does not make sense on its own because it has to be
2 caused by something, I would believe.

3 And perhaps it's the thought that, if it's not air
4 carrier, extreme weather, national aviation system or security,
5 but there's still a delay, maybe this is a catch-all bucket for
6 something that they didn't think about that could affect
7 arriving aircraft. But it's hard to imagine what that would
8 be.

9 Maybe internationally there was some passport issue or
10 something about, you know, international airspace, going around
11 Ukraine and having it take longer to go from Turkey to London.
12 Those aren't air carrier, extreme weather, aviation system or
13 security, but I'm just guessing as to what would be thought
14 about as fitting in that bucket when they first designed this
15 back in D.C. 20 years ago.

16 Q. Got it. And the right portion of your graphic here with
17 the 42 things that might fall into air carrier delays, when you
18 prepared this graph here, where did you get the list of 42?

19 A. That was a screenshot from the source I listed down below
20 from the online explanation of what's in air carrier delay.

21 Q. And what is the source listed at the bottom there?

22 A. It's Bureau of Transportation Statistics, which is the
23 repository of the government's online publicly available
24 airline and airport data, which includes a wide variety of
25 other information besides flight delays.

1 MR. HASKELL: Got it. I think we can take this down
2 off the screen. Thank you.

3 THE COURT: I have another question. So I'm just
4 looking at this. If you have late crew and then you have
5 stowing baggage, are they really allocated -- there's a late
6 flight. Are they picking one of those two things?

7 THE WITNESS: I think, Your Honor, what they're asking
8 airlines to do is, if any one of these affected the flight
9 time, that it's attributable to air carrier delay. There's no
10 requirement that the airlines themselves submit at this
11 discrete level. If the problem fits within one of these
12 buckets on the right-hand side, the airline reports to the
13 government that it was an air carrier-caused delay.

14 THE COURT: So your next slide is not going to be the
15 number of delays attributable to item 24.

16 THE WITNESS: No. There's no public information,
17 which is a great point, which is part of why we've presented
18 this exhibit. There is no way to discern from the government's
19 data the degree to which or not late crew has affected a
20 flight. It's just one of the 42.

21 So when we measure in terms of the best we can do with
22 government information, air carrier is the bucket in which late
23 crew fits. But there's a whole bunch of other stuff, as you
24 can see, that are in there.

25 Q. I guess it's probably best, Mr. Akins, to put a finer

1 point on that to clear it up a little.

2 So the 42 items that we see there, the federal government
3 doesn't require airlines to submit data specific to each of
4 those 42 items as part of this reporting requirement, does it?

5 A. No. It specifically says they don't. They're to report
6 air carrier causes for any of the items listed on the right as
7 a single number --

8 Q. So the -- I'm sorry.

9 A. -- as a single number.

10 Q. Got it. Does the federal government even require airlines
11 to keep track of delays at the level of granularity that we see
12 in the 1 through 42?

13 A. I know of no rule or law that requires such information be
14 kept.

15 Q. But I think you testified earlier that in your experience
16 many airlines do keep that kind of level of granularity for
17 their own internal purposes.

18 A. Yes.

19 Q. And for what reasons might an airline look to that
20 granular level of data?

21 A. Well, if five of these categories are causing the majority
22 of their air carrier delays, they would like to implement, I'm
23 sure, investigations to figure out what's causing the delays in
24 their operation. And we've seen already evidence I guess from
25 what we discussed earlier today that American Airlines keeps a

1 variety of information about day-to-day or month-to-month
2 reviews of flight crew or absentee information.

3 So my experience is that these are represented most likely
4 by different departments. If you've got a broken lavatory,
5 it's air carrier-caused. That has nothing to do with the labor
6 relations department which would be looking into issues of late
7 crew. So you've got sort of companywide interest that's
8 probably, my best guesstimate, best business practices would be
9 to assign fixing theses problems if they come up to the various
10 departments in which they occur.

11 So, you know, I don't know specifically if you say United
12 Airlines has a cargo handling derivative off of this that says
13 we've got to figure out what's going on with cargo handling,
14 but they might, it might assist them in fixing a problem that
15 may be occurring with, quote, "cargo handling."

16 Q. Has your experience in the airline industry given you
17 insight into how many internal delay cause codes a given
18 airline might have?

19 A. Yes.

20 Q. And can you speak about that? How many are we talking?

21 A. Dozens and dozens and dozens just for flight crew alone.
22 I've seen information from Delta. I've seen information from
23 Southwest. I've seen information from American over my career.
24 And they tend to have very deep dives on causes by base, by
25 day, by time in terms of issues that have arisen relating to

1 late flight crews.

2 Q. Okay. So if we can switch gears just a little bit and
3 speak about airline operations with particular respect to
4 staffing and ensuring adequate staffing. I'd like to break
5 this down into two categories: flight crew and ground crew.
6 And I suspect we're going to break each of those into
7 subcategories.

8 First of all, flight crew, what do you understand flight
9 crew to mean in the context of the airline industry?

10 A. Flight crew is the cabin crew, which are flight
11 attendants, and the cockpit crew, which are pilots.

12 Q. Okay. And are you familiar with the governmental
13 regulation of each of those two categories of employee?

14 A. Yes.

15 Q. And again, let's break it down, flight attendants first.
16 Can you speak a bit about the way in which the federal
17 government regulates flight attendants and what they can do
18 particularly with respect to their work?

19 A. Right. So there's sort of two buckets we'll talk about.
20 One is the certification or licensing requirements that the
21 federal government requires of certain employee groups to be
22 employed by airlines, and the other one has to do with the
23 federal government prescribing various aspects of scheduling
24 rest or duty time or work time provisions.

25 Flight attendants don't have licensing, but flight

1 attendants do have requirements to be trained on safety
2 procedures, to evacuate airplanes, to apply first aid, these
3 days to have handcuffs to assist the other flight attendants to
4 subdue, you know, what we've seen in the air these days. And
5 so they don't have the kind of oversight that, say, pilots do,
6 which require probably the most government oversight in terms
7 of licensing of any profession in the United States, maybe
8 outside of a heart surgeon.

9 They are required to have a minimum number of hours of
10 training. They're required to pass on a six-month basis what's
11 called a Class 1 Medical Certificate to prove that they're
12 healthy. They have to be under age 65. They have to now
13 obtain something called an air transport pilot license, which
14 has been in effect for about the past nine years, in order to
15 fly, in order to get a job with an airline. That training for
16 a pilot takes about three to four years these days to become a
17 paid professional pilot. Flight attendants, generally a couple
18 of months.

19 Hence the problem with cockpit crew that I discussed
20 earlier, that the regulations that govern piloting geared
21 toward safety are much more restrictive and severe in terms of
22 training requirements and licensing requirements and health
23 requirements than any other group of employees that I'm aware
24 of.

25 Q. Now, it's your understanding, or is it your understanding,

1 Mr. Akins, that pilots and flight attendants are subject to a
2 minimum staffing requirement for each flight?

3 A. Yes.

4 Q. And with respect to flight attendants, what is that
5 requirement?

6 A. The requirement is that the federal government requires a
7 single flight attendant for a ratio of one to 50 seats. So if
8 you've got a 50-seat airplane -- and the reason why we have so
9 many 50-seat airplanes is due to the fact that the government
10 requires one flight attendant for 50 seats. If we had 51,
11 there would be two flight attendants on those airplanes. So
12 there's always a circular connection between the regulation and
13 what's actually operated.

14 That requirement used to, in the day, be exceeded.
15 Oftentimes you would find carriers staffing toward their
16 marketing goals or their service levels, especially on
17 international flights, where you may require six or eight
18 flight attendants, they may have 10 or 11 flight attendants
19 onboard.

20 So it used to be more typical than it is today that flight
21 attendants staffing exceeded FAA minimums. Now I don't think
22 there's any air carrier that operates domestically, domestic
23 flights that has an excess of flight attendants on board, but
24 there are some that have service derived excess flight
25 attendants on board on international flying.

1 Q. On international. Did I understand you correctly that
2 that's not common on domestic flights?

3 A. It's not and it's not required. It's above the FARs. So
4 there is some flexibility for carriers to overstaff. There's
5 no flexibility to understaff. The flight can't leave.

6 Q. So you mentioned that back in the day, I think you said
7 airlines would staff more flight attendants than were required.
8 In your experience about when did that change?

9 A. It changed gradually after deregulation which occurred in
10 1979, in October, which took the government out of the business
11 of regulating the airline services. But gradually, over time,
12 I would say it came to an end quickly after 9/11 when airlines
13 were under incredible stress to continue operating.

14 Q. And before we move off of regulations, flight attendants
15 are also subject to federal regulation relative to the time
16 that they can work and the time that they need to rest; is that
17 correct?

18 A. It's mostly the rest of part of it. Generally, collective
19 bargaining agreements that I've worked on deal with scheduling
20 and maximum duty times. But it's really the newest laws from
21 the Federal Aviation Administration have been to govern the
22 amount of sleep or rest after a sequence of flying that flight
23 attendants are required to have before they can commence
24 another flight, and the new rule is ten hours.

25 Q. I'm sorry, ten hours?

1 A. Ten hours of -- ten hours off the airplane, not
2 necessarily at the hotel or away from the airport. It's ten
3 hours of nonpaid, off-the-airplane rest.

4 Q. And that's ten hours between what and what?

5 A. The door open and the report time. It's generally called
6 debrief time. And some airlines start their briefing a half
7 hour, 45 minutes before the flight, depending on whether it's
8 international or domestic. It's normally known for flight
9 attendants and pilots as check-in time.

10 Q. Okay. I'm sorry, the regulation you spoke about a moment
11 ago regarding minimum staffing of flight attendants on
12 flights --

13 A. Right.

14 Q. Is it fair to say that if the minimum number of flight
15 attendants is not available, that plane just doesn't take off,
16 perhaps doesn't push back from the gate?

17 A. Right, that's exactly right. It may not be that obvious,
18 but I didn't get to pilots. But for now, given the extreme
19 strain on pilots, it may change, but for now, the Department of
20 Transportation, pretty much every regulatory body worldwide
21 requires that there be two pilots on board every cockpit.
22 That's changing.

23 Right here in Boston, Boeing has invested over a billion
24 dollars in Cambridge to develop automated flight, which will
25 allow for a single pilot. And that's due to the extreme lack

1 of availability of pilots at this point. And so that could
2 change.

3 So we need two pilots, one captain and one first officer,
4 both with the requisite licensing time and training. If you're
5 flying internationally or over eight hours, you need what's
6 called an augmentation to the crew. That would be a first
7 officer that could fly during the mid-flight sequence so that
8 no pilot is actually at the yolk for over eight hours. If
9 you're going over 12 hours nonstop, you need two additional
10 pilots. They're called bunkies or supplementals.

11 Q. So I think we began to touch on this a moment ago when we
12 spoke about staffing to the minimum versus overstaffing. How
13 does an airline go about ensuring that it has an adequate
14 number of, say, flight attendants for a given flight?

15 A. Sure. You know, each airline is doing it slightly
16 different and has slightly different constraints or flexibility
17 built within their collective bargaining agreement. Delta does
18 not have a collective bargaining agreement, so it perhaps has
19 the most flexibility.

20 But in terms of staffing to meet the FARs, there are sort
21 of two categories for both pilots and flight attendants that
22 airlines have developed. One is called the line fliers, which
23 you bid for a sequence of flights. The initial training
24 usually for pilots and for flight attendants initially starts
25 in a different bucket, which is called reserve. That's the

1 system by which the airlines sort of spackle-in for staffing
2 irregularities or shortages during the given flight or period
3 of time.

4 So the line flight attendants bid for flights. The
5 reserve flight attendants back up those bids in case something
6 happens where a line flight attendant cannot serve. But there
7 are buckets that are left open called open time, of all things,
8 where no line flight attendant or pilot has been assigned, and
9 the airline can essentially make flight attendants or pilots
10 aware that there's available time to fill if they want it. If
11 it's not filled voluntarily, generally airlines fill it with
12 reserves.

13 Q. And I guess that gets to my next question. How does an
14 airline go about ensuring that it has the right number of
15 flight attendants to fill all the open time that needs to be
16 filled? What pools does the airline use?

17 A. There are incredibly complex scheduling systems. Most of
18 them are PBS systems, preferential bidding, which is a way in
19 which airline crews use their seniority and longevity in the
20 job to present a set of criteria to their company that says I
21 don't want to work specific flights; I don't want to work
22 weekends; I don't want to work on, you know, overnight flights,
23 whatever.

24 And the computer assigns flying to those line flight
25 attendants and pilots based on the preferences that were

1 expressed each month for that particular individual. And it
2 tries to optimize the flying that was provided based on the
3 preferences indicated by the individual flight attendant or
4 pilot.

5 So those flights again get filled. The schedules are
6 assigned. After they're assigned, flight attendants and pilots
7 can trade trips generally with each other to make sure that,
8 you know, one pilot needed a Saturday off, and they're trading
9 that Saturday for the previous Saturday with another pilot.
10 That's generally done under the radar. They can do it in
11 automated systems within the company's scheduling software.

12 At the end of the day, there are a number of ways that an
13 airline can ensure that flights have the proper number of crew,
14 but generally the tools that they have aren't just the reserve
15 system. There are other ways to fill those buckets.

16 Q. And with respect to the reserve system specifically, fair
17 to say there's more than one type of reserve?

18 A. Sure.

19 Q. Can you speak about those.

20 A. Sure. Most carriers have airport-ready or standby flight
21 attendants and pilots that are in a crew lounge or stationed at
22 the airport for periods of four to six hours. Those
23 ready-reserve assignments complement a backstop of reserves
24 that are available usually within two to three hours of the
25 flight departure time. So if they're called and available,

1 they have to have generally between 12 and as much as 15 to 24
2 hours of availability either in their domicile or somewhere
3 that's within two to three miles -- two to three hours away
4 from the airport that they're sitting reserve in.

5 So there's the airport-ready reserve to fill immediate
6 problems, and then there's sort of the longer call reserves
7 that fill reserve needs that are generally notified for longer
8 periods of time, two to three hours.

9 Q. And in your experience, how do airlines determine the
10 number of both ready reserves and airport standbys that they
11 need to have?

12 A. There is a very refined and structurally very organized
13 systematic historical look at big data involving all types of
14 information regarding the availability of crew on a historic
15 basis for pretty much every day of the year for every flight
16 for every destination that they fly. And those algorithms tell
17 the crew schedulers the probability of needing a certain amount
18 of reserve staffing to back up what is likely to be a shortage
19 in staffing for a particular day, particular flight at a
20 particular time. And so it's evolved into a very complex
21 computer program that's looking at historical data based on the
22 likelihood of a staffing shortage on a particular day.

23 Q. And in your experience do different airlines approach that
24 task in different fashions?

25 A. Yes, they do.

1 Q. And how does that work?

2 A. Well, I mean, each carrier has a value assigned to
3 ensuring that delays are minimized, right? Traditionally Delta
4 has been known in the last few years to run some of the lowest
5 delay ratios of any carrier. JetBlue on the other hand runs
6 some higher delays.

7 I've worked with their flight attendants. I know how
8 their system works in terms of scheduling, and I realize that
9 Delta has placed on a corporate level a much higher priority in
10 ensuring on-time integrity in their system than, say, JetBlue.

11 So when JetBlue looks at the same set of circumstances,
12 their reserve staffing is likely less as a percentage of flight
13 staff than Delta, which wants to cover those flights and likely
14 has excess flight attendants or pilots who don't get used
15 during their reserve period simply because the company has a
16 higher priority on ensuring that the schedule integrity is
17 maintained.

18 Q. And the tools and techniques and processes that you spoke
19 about relative to flight attendants, is it fundamentally
20 different than the way airlines ensure adequate coverage for
21 pilots?

22 A. No. It's the same.

23 Q. So I'd like to pivot from flight crew, which we just spoke
24 about, to ground crew. Let me ask, to your understanding what
25 comprises ground crew?

1 A. Ground crew is a much bigger pool of employees in terms of
2 the number of employees at an airline. Some of the larger
3 buckets are the people that we see loading bags and driving
4 tugs out the window of our aircraft. Those involve ramp folks
5 that deal with marshalling airplanes into the gate as well as
6 hauling bags to and from the terminal and other aircraft for
7 connecting flights. And they also do a bit of tug work in
8 airports that require tugs to assist airplanes in getting to
9 the runway.

10 The second bucket I would think of employees that are a
11 fairly large group are mechanics. United and Delta and
12 American each have around 10,000 or more technicians. They're
13 licensed technicians. They work on airplanes. They fix things
14 that are broken. They're the fellows that come on with the
15 clipboard when we've had a flight issue, and the pilot says,
16 Unfortunately, there's something wrong with the airplane, we
17 have to have maintenance take a look, those are the people that
18 come out and fix it. They're also the ones that do heavier
19 maintenance on airplanes and hangars.

20 There's a huge -- well, it's not as big as it used to be,
21 but customer service representatives used to be the people we'd
22 call to get tickets before everybody started using computers.
23 They're now the people that we call generally when our flight
24 is delayed or canceled to get a new booking. There are several
25 thousands of those at most carriers.

1 These is also a group of dispatchers that track flights
2 and plan flights, weight and balance issues, fueling issues
3 that airlines are required to have on board. There are people
4 who take care of maintenance equipment and maintenance parts.
5 They're called stores employees, sort of a librarian for parts
6 and services within the airlines that have to do with
7 maintenance.

8 There are flight simulator instructors, flight simulator
9 technicians, provisioning agents that put food on airplanes.
10 Within each of those categories are subcategories. For
11 instance, in maintenance, some maintenance departments also do
12 repairs for other airlines as a retail business, like
13 American's operation in Tulsa.

14 Q. Mr. Akins, one category, if you did mention, I didn't
15 catch it, were gate agents. Are those folks also considered
16 part of the ground crew?

17 A. Yes, yes. And as Dr. Lee testified yesterday, the gate
18 agents are required to board an airplane.

19 Q. Okay. So of the various categories of ground crew workers
20 that you just mentioned, are any of them subject to federal
21 regulation in a manner similar to the flight attendants you
22 testified about earlier?

23 A. I think there's a couple of categories that you would
24 consider to be somewhat subject to federal oversight in terms
25 of licensing or in terms of their maximum duty times. The

1 mechanics that work for airlines that touch airplanes that deal
2 with FAA-certificated or FAA-approved parts and equipment have
3 to have an A and P license.

4 Q. What's an A and P license?

5 A. Which is an airframe and power plant license, which is a
6 specific training in a technical school. And the FAA requires
7 that mechanics that essentially fix airplanes have those two
8 licenses.

9 And generally most technicians have those licenses in
10 addition to other licenses that they may possess.

11 Surprisingly, and it's not a comfort to me to know this, but
12 mechanics can work every day, all day, up until 26 days in a
13 30-day month without any FAA oversight. They only require four
14 days of rest during a month.

15 So that flexibility is a lot different, and we'll talk
16 about that compared to flight attendants and pilots who have
17 very strict requirements about how much rest they need, how
18 much work they can do. But it's highly unusual that the sort
19 of governance that are on the flight crew exists anywhere
20 outside the cabin or the cockpit.

21 Q. So when I asked you a moment ago about regulation of these
22 folks' work, you mentioned perhaps licensing regulations and
23 also duty time regulations, you spoke about the A and P
24 license --

25 A. Right.

1 Q. -- that mechanics may possess. Are there other licensing
2 requirements applicable to any of the ground crew work
3 categories that you described?

4 A. The dispatchers need to be certificated in what's called
5 flight-following, and it's not really a license. It's more of
6 a carrier certification.

7 Q. Let me break that down if it's okay. When you speak about
8 dispatchers, who are those folks; what do they do?

9 A. Those are the ones that make the final determination of
10 the capabilities of the aircraft in terms of the load of
11 passengers and the ability to fly, the particular route has
12 enough fuel and has a particular route where that fuel will
13 sort of allow them to either land at the point of destination
14 or an alternate destination in case there's some problem in
15 flight. So they're essentially flight planners.

16 However, once they get in the air, the flights that get in
17 the air, they track where the airplanes are for a system kind
18 of network integrity basis. But once you're in the air, it's
19 generally air traffic control who is selecting for the pilots
20 where to go. But the pilots ultimately have the final say in
21 which track that they choose.

22 If there's something going on with the airplane in terms
23 of the fuel or whatever, they're reporting back to dispatch or
24 they're reporting back to maintenance about issues. So they're
25 an integral part of the daily operation. And every carrier has

1 them. They tend to be centralized in one location generally
2 where the headquarters is.

3 Q. Okay. And to your knowledge do any of the A4A carriers
4 employ dispatchers at Boston Logan Airport, or do you know?

5 A. I know that they don't.

6 Q. They do not, okay.

7 And so besides, I think you testified, airline internal
8 certifications that are associated with dispatchers and the
9 licensing that's associated with mechanics, any other licensing
10 regulations applicable to any of the ground crew?

11 A. Not that I'm aware. Obviously they have to be trained up
12 to some corporate standard or, you know, some safety standard
13 if you're on the ramp around airplanes. But to my
14 understanding, there isn't any federal or license granted to
15 people that are marshalling airplanes or people that are
16 working at the gate.

17 Q. Okay. And you also mentioned duty time regulations, and I
18 think you spoke a little bit about duty time regulations that
19 might govern mechanics. Are there others of which you're aware
20 in terms of regulatory standards?

21 A. Right. In terms of the ground crew, no, no. I forgot to
22 mention that the bigger constraint on pilot supply in terms of
23 the amount of hours that a pilot can fly, the FARs require that
24 a pilot not fly any more than 1,000 hard hours, which are
25 actual flying hours in a given year or 100 hours in a given

1 month. None of that, as far as I know, exists for ground crew.

2 Q. Okay. And so in terms of staffing, it might make sense to
3 break some of the ground crew down into categories. So let's
4 take the ramp workers first. I think you testified that the
5 ramp workers are the folks who marshal the aircraft, load and
6 unload the baggage, operate the tugs. Anything else that
7 rampers do?

8 A. They sometimes do provisioning. Right now, what's the new
9 technology, they actually snap bag tags so that the airline can
10 facilitate a more efficient distribution and collection and,
11 you know, connecting system for bags so that we get our
12 information that says your bags made the flight.

13 Five to ten years ago, that wasn't available, and it's
14 what the rampers are doing now that they used to not do.

15 Q. When you say "snap the bag tag" --

16 A. They'll take a picture of the barcode with a machine.
17 You'll see, if you're in an airplane, you'll look down, as I
18 always do, to see what's going on with the bags and making sure
19 my bag is loaded, you'll see them with a gun, with a reader,
20 barcode reader, and that's being fed into a central computer
21 that says this bag was loaded onto this airplane. And in fact
22 that information is used by dispatchers to do what's called a
23 weight and balance analysis, how many bags are on board, how
24 many people are on board a particular flight.

25 So rampers are essentially running around handling all the

1 duties on the ramp, marshalling, tugging, bag transfer, driving
2 the tugs. People that are driving those tugs sometimes at
3 outrageous speeds trying to connect to flights are rampers
4 generally.

5 Q. Okay. And I think you testified earlier you've
6 represented rampers groups in connection with CBA negotiations
7 in the past, right?

8 A. Yes.

9 Q. And so in your experience and knowledge, at a given
10 airport, understanding that it may be different carrier to
11 carrier, how does a carrier organize its ramp workers?

12 A. Right. They're sort of, I guess it's dependent on the
13 airport where the rampers are employed.

14 Q. If you'd focus specifically on Boston Logan Airport, if
15 you're aware of that, that would be helpful.

16 A. Well, Boston Logan I think would be representative just by
17 the size of the operations at air carriers there. I would say
18 companies like A4A carriers that operate at Boston Logan have
19 company-employed rampers on a full-time basis primarily that
20 service in those functions that I just mentioned.

21 Airports that have smaller operations may have part-time
22 rampers, or they may have outsourced rampers that are
23 essentially provided by a third party. It's very common,
24 JetBlue I believe uses them in New York. They may use them
25 here, but they have outsourced some of their ramp function to a

1 third party company.

2 So the ones that work for the A4A carriers generally are
3 under a CBA, collective bargaining agreement, and have
4 eight-hour scheduled work times with a lunch break. They also
5 have in a common circumstance what are called relief agents.
6 And those folks serve sort of at the peak of operations.

7 Hub-and-spoke airports we haven't talked about, which is
8 the places like Boston is becoming for Delta, which have very
9 high activity in a very short window of time where flights are
10 de-planing, inplaning when people are connecting to flights,
11 there tends to be situations and timeframes in which the staff
12 of rampers that are just regular rampers or part-time rampers
13 need assistance, and so there are relief agents available.
14 Sometimes they're supervisors, management supervisors.

15 Sometimes they're relief agents. So they're just there for a
16 few hours to assist with peak times.

17 Q. In your experience are ramp workers organized into crews
18 at the airport?

19 A. Not in terms of their scheduling. They may be in terms of
20 crews in terms of, you know, working with your buddies. But,
21 you know, generally they have staggered times of start based on
22 an array of flight scheduling, but they're not really crews the
23 way you would think of like a flight crew.

24 Q. Okay. And similar to the question I asked earlier about
25 flight attendants, how does -- how might a given carrier go

1 about ensuring that it has an adequate number of folks working
2 on the ramp, you know, on a given day at a given airport to
3 meet its needs?

4 A. Well, that's an interesting question because I think
5 Southwest and other carriers have found that the primary way to
6 make sure you have enough rampers or other employees is to make
7 sure they're getting compensated at a rate that equals at least
8 what they're making at other types of opportunities in the
9 community.

10 That is, Southwest ran into this problem where they had a
11 very severe staffing shortage, and they were paying well below
12 what the market was demanding, for instance, in Denver, and had
13 to raise their rates. In fact, they had to double their rates
14 from about \$7 dollars an hour to \$15 an hour.

15 So point one is to make sure you're compensating what the
16 market demands. And number two, they do have, you know,
17 various ways to either voluntarily or force people on the ramp
18 to spend time in overtime if they assume that there's going to
19 be a shortage.

20 There are manpower control operations at each airport that
21 are in the purview of management. And if somebody calls in
22 sick or is otherwise absent or gets hurt on the job, rampers
23 can either assist in a way that they were sort of doubling
24 their efforts to cover flights, or the company can require that
25 rampers stay for a period of time to cover existing flights

1 that they weren't planning on covering, essentially working
2 overtime without their volition. But for the most part, in my
3 experience rampers and other ground employees have the
4 opportunity to volunteer for overtime.

5 And generally that carrot works, you know, for the most
6 part to get people to stay for overtime. If it doesn't work,
7 in reverse seniority order, employees that are either at the
8 airport or about to be scheduled at the airport are mandatorily
9 assigned overtime shifts to make sure there's enough.

10 Q. And in your experience, Mr. Akins, do airlines make
11 decisions about the level of staff to put out on the ramp in
12 reliance on the possibility of overtime?

13 A. Yes. And it's one of the more interesting things that I
14 found in my career, is that just like flight crews -- and I
15 spoke about open time. A lot of airlines purposely understaff
16 on a financial basis in certain bases and rely on people
17 volunteering for overtime because it might be cheaper for those
18 airlines to have someone occasionally pay time and a half or
19 double time than it would be to have an additional staff person
20 that's got all the benefits and requires training, on-staff
21 that isn't really needed on a full-time basis.

22 So there's a wide variety of ways in which carriers
23 supplement the staffing or staffing requirements are filled by
24 the airlines.

25 Q. In your report in this matter you mentioned a technique

1 called job continuation assignments.

2 A. Right.

3 Q. What's that?

4 A. That's essentially asking someone to continue their,
5 whatever they're working on, mostly mechanics, if they're in
6 the middle of fixing something, to carry that work on to
7 another shift. If they were supposed to get off at 5:00 and
8 they've got another half hour to fix a tire or repair an engine
9 cowling that day, they would be asked to continue that job not
10 for another full shift but just until that job is complete
11 because the inefficiency of someone that's coming on a shift to
12 first get debriefed on what is wrong with the aircraft or tug
13 or whatever they're trying to fix is more expensive than it
14 would be just for the person to continue with that job.

15 Q. And you mentioned earlier in connection to flight
16 attendants the opportunity to trade shifts amongst themselves.

17 A. Right.

18 Q. In your experience, are similar opportunities available
19 with respect to the folks who work on the ramp?

20 A. Yes.

21 Q. Okay. And does it ever come to pass that supervisors or
22 some sort of manager at the airlines is asked to work on the
23 ramp?

24 A. Yes.

25 Q. And how might that happen?

1 A. A lot of times that happens or doesn't happen because it's
2 either allowed or not allowed according to the collective
3 bargaining agreement. And usually it's a fight that the unions
4 want to have their members doing the work. And managers,
5 sometimes in the operation, suggest that it's more efficient to
6 have a supervisor help with bags or with tugging.

7 And so a supervisor, if the collective bargaining
8 agreement allows it, can help out, a management person can help
9 out in loading bags or marshalling airplanes. That's a rarity
10 because most collective bargaining agreements don't allow that.

11 Q. Fair enough. Then you mentioned a bit earlier relief
12 shifts or relief lines. Could I ask you, how exactly do those
13 work?

14 A. Well, at Southwest I've been working with the TW members,
15 union members of their ramp and provisioning craft. There's
16 about 15,000 of them. And management has the ability to staff
17 relief agents, I think it's up to 20 percent of that number, so
18 it's essentially a 20 percent, quote, "reserve pool."

19 Q. What exactly does a relief agent do on a given day?

20 A. As I suggested, they're there primarily not as the
21 baseline staffing but for peak periods and for filling in when
22 there's perhaps shortages of staff. They're backup.

23 Q. I'm sorry?

24 A. They're backup staffing essentially.

25 Q. And are these relief agents actually at the airport ready

1 to be plugged in where needed or are they at home?

2 A. Yes, yes, they're at the airport.

3 Q. They're at the airport. So you spoke about multiple
4 different categories of ground crew, and we've covered the
5 rampers in some detail. For the next few I just want to focus
6 on the differences, if there are any. I don't think we need to
7 repeat everything.

8 But, say, with respect to the mechanics and the
9 maintenance staff, do the airlines generally have the same
10 tools and techniques and processes available to ensure adequate
11 maintenance staff that you described with respect to rampers?

12 A. Right. And I think, again, the category of maintenance in
13 my mind, because it's a license-certificated category, is a
14 different kind of profession than a ramp employee which doesn't
15 require those types of certificates or training. And in my
16 experience, airlines do not have any problems whatsoever with
17 mechanic staffing.

18 There's a certain esprit de corps that I've seen
19 especially in the mechanic ranks, which is, they will pick up
20 work voluntarily where it's available, and they'll sign up
21 voluntarily for overtime. And mechanics, starting mechanics
22 now make pretty good money, and to pay double time or time and
23 a half to those mechanics is enough of a carrot to essentially
24 cover any issues that may arise with staffing.

25 The other part of the mechanic's job, and I think it's the

1 flexibility of the employee to be able to work overtime, is one
2 part of the staffing coverage. The other part of it is their
3 jobs are fungible that an aircraft that's sitting in the hangar
4 that's having a tire change perhaps for a flight tomorrow
5 morning can be a lower priority than a problem at the gate
6 with, say, a hydraulic filter or light, an instrument light
7 that's out. So they can stop the job, prioritize the problem
8 at the gate and move from the problem they were working on,
9 which is a longer-term problem, to something that's a critical
10 problem.

11 Q. I see. And moving on to another category of ground crew
12 workers, the customer service representatives that you
13 mentioned earlier.

14 A. Right.

15 Q. In your experience do the airlines have similar tools,
16 techniques and processes available to ensure adequate coverage
17 of CSRs as they do or for other categories of ground crew?

18 A. Yes.

19 Q. Are there any differences with respect to CSRs that are
20 worth mentioning?

21 A. CSRs now largely work from their place of choice, largely
22 their homes. There's a few CSR centers still. They've sort
23 of -- like everybody probably in this room has done a lot more
24 work at home than we have in the office in the past couple of
25 years.

1 But the CSR job, again, is one where there's been some
2 wage pressure on airlines. Those jobs are very flexible.
3 Generally people can sign in or sign out, take breaks when they
4 need to. So again, there's a flexibility there that I don't
5 think is available or is as critical as on a ramp in terms of
6 not marshalling in a plane because you're short-staffed or not
7 being able to put a tug on the airplane because you're
8 short-staffed. Those types of problems don't exist with a CSR
9 I believe in the same way.

10 Q. Okay. And then another category of ground crew you
11 mentioned is gate agents. Is it fair to say, so you've
12 represented those groups of employees in connection with CBA
13 negotiations and the like?

14 A. Yes. I'm currently involved with the former American U.S.
15 Airways CSRs.

16 Q. And I'm sorry, CSRs or gate agents --

17 A. Sorry. Customer service reps.

18 Q. Okay. With respect to gate agents -- let me ask, gate
19 agents and CSRs, do airlines typically treat those as separate
20 categories?

21 A. Yes, but they can be covered by the same collective
22 bargaining agreement.

23 Q. Got it, got it. So I think you've already testified about
24 CSRs, but with respect to gate agents, specifically, in your
25 experience do the airlines have the same tools, techniques,

1 processes available to ensure adequate staffing as you've
2 already testified about with respect to other categories of
3 ground crew?

4 A. Yes, yes, my understanding, yes.

5 Q. Okay. Mr. Akins, do you have an opinion about how
6 impactful the role of ground crew workers are respecting the
7 potential delay of flights?

8 A. I would say they're much less impactful than flight crew
9 at a minimum, and at a maximum I'd say they really have very
10 little, if any, effect.

11 Q. And why is that your view?

12 A. Because of the indirect association that most of those
13 jobs have with the departure of a flight, they're not as
14 critical. I believe that your ability to board an airline and
15 have it depart on time is a lot different than fixing a tire
16 or, you know, moving a bag around in terms of the integrity of
17 the schedule. They're less connected to the on-time delivery
18 of the product. Even though they're absolutely critical and
19 are required for an airline to function, their jobs aren't as
20 closely tied to the operation of a flight as flight crew.

21 Q. So I would like to switch topics a bit, Mr. Akins, and
22 speak about Boston Logan Airport, particularly over the past
23 six or seven years. In your work have you had the opportunity
24 to observe and study what's happened at Logan Airport during
25 that period of time?

1 A. Yes, I have.

2 Q. And what has happened at Boston Logan Airport during that
3 time?

4 A. Boston is an incredible example of an extremely successful
5 airport.

6 Q. In what way?

7 A. It has had what I would call explosive growth. It's had
8 the addition of new routes and services. It's had a reduction
9 in overall fares. It's had enormous investment by the
10 community and just recently by the federal government in terms
11 of developing Boston Logan to handle the incredible growth and
12 demands that are being placed on it. There's been crew bases
13 established there recently, both Delta and JetBlue. And with
14 JetBlue, the carrier associated with it in the northeast is
15 American. They've all developed focuses and hubs that have
16 expanded services to a degree that I don't think Boston Logan
17 has ever seen in the past in terms of growth rates or in terms
18 of traffic levels. It's an extremely healthy environment at
19 Boston Logan.

20 MR. HASKELL: All right. Let's break that down a
21 little bit. And to do so we're going to take a look at
22 Defendant's Demonstrative 3. I'll hand out paper copies and
23 also see if we can get it up on the screen.

24 Q. So this graphic we're looking at, Mr. Akins, is this
25 something you prepared in connection with preparing your

1 testimony for this case?

2 A. Yes.

3 Q. And walk us through it. What are we looking at here?

4 A. Sure. This is at the source, you can see it's called U.S.
5 DOT T-100 data, which again is part of this collection of
6 information that the Department of Transportation has publicly
7 accessible online and by other means by private vendors. It
8 represents a period in time for A4A carriers after MESTL -- and
9 I've got it in most of my charts ESTL. I was unaware that we
10 changed the acronym to MESTL. But it's MESTL. Since 2015 A4A
11 carriers have had an increase of 16.5 percent in departures and
12 20 percent in passenger inplanements.

13 We're talking about a very major, large-scale airport here
14 that is adding significantly to its existing base of traffic
15 during the period immediately following the establishment of
16 MESTL. So we've got this very successful measure of empirical
17 data which suggests that Boston is a healthy and growing
18 airport for A4A carriers.

19 Q. And let's break down the graphic a little, please. First
20 of all, it's focusing on A4A carriers. I know you formed your
21 opinion in this case some time ago and that Delta joined or
22 rejoined A4A recently. Do the figures we're looking at here
23 include Delta?

24 A. No.

25 Q. Okay. And I think you testified earlier that Delta has

1 been an example of growth in Boston recently?

2 A. If Delta were included in this, they'd be larger --

3 | Q. Okay.

4 A. -- these numbers.

5 Q. And the 16.5 percent growth in departures that we see
6 between 2015 and 2019, what are you referring to when you say
7 departures?

8 A. That's all international and domestic passenger departures
9 from each of the A4A carriers combined.

10 Q. And is that in terms of number of flights or number of
11 passengers or what?

12 | A. Flights, flight departures.

13 Q. I'm sorry, you said flights?

14 | A. Flight departures.

15 Q. Got it.

16 A. An airplane taking off is one departure.

17 Q. Got it. And the graphic also shows a 21.1 percent in
18 passenger inplanements between 2015 and 2019. What do you mean
19 by passenger inplanement?

20 A. Those are folks getting on the airplane in Boston.

Q. So those are passengers?

22 A. Regardless of whether they originated in Boston or
23 elsewhere and are just connecting.

24 MR. HASKELL: Got it. If we could get Demonstrative 5
25 on the screen. I'll give you a copy of this as well.

1 Q. So Demonstrative 5, is this also a graph that you prepared
2 in connection with your testimony in this case?

3 A. Yes.

4 Q. And what are we looking at here, Mr. Akins?

5 A. We're looking at the growth overall in the same types of
6 figures for inplanements for passengers but only on a
7 year-by-year analyzed basis. And the black lines on the
8 left-hand side show the annual growth from 2016 over 2015
9 versus the U.S. average growth in passenger inplanement.

10 So for each one of these years, the black bar is bigger
11 than the orange bar showing that Boston was in fact growing
12 faster after ESTL than the U.S. average for all airports, for
13 both international passengers for all airlines.

14 Q. And these graphs that we're looking at here, are they
15 limited to A4A carriers or a certain subset of A4A carriers?

16 A. No. These are all carriers.

17 MR. HASKELL: I'll hand out Defendant's Chalk 4, DDO4.

18 Q. So what are we looking at here, Mr. Akins?

19 A. We're looking at the same information in the left or the
20 right-hand three bars or four bars between 2015 and 2019,
21 they're the same data that was shown on the previous chart,
22 which is the post-MESTL experience.

23 What we didn't see in the last chart was the pre-MESTL
24 experience, which are the years 2011 to 2015. And it shows
25 that all of the bars of growth before MESTL at Boston Logan

1 were lower prior to the implementation of the law than after.

2 Q. And from the data that you've analyzed and shown us in the
3 last three charts, do you draw any conclusions about MESTL's
4 effect on the growth of passenger traffic at Boston Logan
5 Airport?

6 A. Well, if it were in some way connected to the tremendous
7 growth, I would say it would have been a boon to the operations
8 at Boston. I don't see how it's connected to this growth. I
9 would think it's not connected in that this growth proves that
10 there hasn't been a significant impact of the implementation of
11 MESTL on Boston traffic. This is against all of the
12 prognostications of Dr. Lee in terms of his analytical forecast
13 that this should not be occurring.

14 Q. Now, when I asked you a few moments ago -- we can put
15 aside this graph.

16 When I asked you a few moments ago, Mr. Akins, about
17 what's happened at Boston Logan Airport, what's happened over
18 the past six or seven years, the first thing I think you
19 mentioned was growth, and I think you also referenced Delta and
20 JetBlue.

21 Let's take those one at a time. With respect to Delta,
22 how has Delta contributed to the growth?

23 A. I think it was mid-January of 2019, maybe it was June,
24 Delta decided it had established a hub in Boston about three
25 and a half years after MESTL was in place.

1 And by establishing a hub in Boston, Delta has focused new
2 services and new routes and has taken over Terminal A. As
3 anybody who flies in and out of Boston recognizes, they've
4 gotten bigger in Boston. And not only have they gotten bigger,
5 they're establishing Boston as a second primary international
6 gateway on the east coast, secondary to JFK.

7 It now flies to nine nonstop international markets. It
8 just added Tel Aviv and Athens recently, and it's flying not
9 just on those routes, but it's flying with its brand new
10 premier, high-tech A330 600 long haul airplanes. So it's
11 positioning the hub to have some sparkle and some pizzaz to
12 attract business customers.

13 Domestically, it's also greatly expanded its domestic
14 service operations with nonstop service all up and down the
15 east coast. Nonstop service was established in May to Denver
16 and San Diego, and it established that nonstop service with
17 brand new, again, high-tech, state-of-the-art A321neo
18 airplanes.

19 So it's putting into this hub a new terminal focussing on
20 growth and new markets for Delta, some new markets nonstop to
21 Boston, lots of new international markets using brand new,
22 state-of-the-art, high-tech airplanes. So this is a primary
23 focus for Delta. They've got great expansion plans which were
24 interrupted by COVID, but they're now back on track.

25 And you folks who live in Boston see the paper, read about

1 this. It's happening, it's real. Delta is now a major player
2 in the Boston area seven years after the MESTL law came into
3 effect.

4 And again, the import of this is that, according to the
5 contentions of the other side, just the potential for
6 compliance with MESTL, it should be doing the opposite in terms
7 of the attractiveness of Boston to Delta. It should be driving
8 away, using old planes, shrinking service, costing a lot more
9 and having fare hikes. And none of that has occurred. In
10 fact, the opposite is occurring.

11 So empirically, the evidence from Boston in realtime is
12 that it's a very healthy, growing airport with lower fares and
13 huge public benefits by the establishment of both Delta and
14 JetBlue with hubs in Boston.

15 Q. By the way, Mr. Akins, I appreciate your nod to we folks
16 who live in Boston. Where do you make your home, sir?

17 A. A little north of here in Stowe, Vermont.

18 Q. And do you ever have occasion to be at Boston Logan
19 Airport or use the airport in Boston?

20 A. Yes, but for some reason we don't have nonstop service to
21 Boston.

22 Q. From Stowe?

23 A. No. From Burlington.

24 Q. You also testified a moment ago, Mr. Akins, about the
25 effect of the coronavirus on what we've seen in Delta's actions

1 at Boston over the past few years.

2 A. Right.

3 Q. On the coronavirus, have you had the opportunity to study
4 the -- what's the right word here? Have you had the
5 opportunity to study the extent to which folks were using the
6 national aviation system during the coronavirus?

7 A. Yes.

8 Q. And what have you seen there?

9 A. Again, as I testified earlier, the industry dropped
10 revenues immediately after the World Health Organization
11 declared COVID a pandemic, I think in March, mid-March of 2020.
12 There was a drop in about 95 percent of passengers, which means
13 that there's way too many airplanes and employees out there to
14 service 5 percent of the people that comprise who was flying at
15 that point.

16 And that window I think existed of this huge drop in
17 demand up until about mid-2021 when the viruses came out and
18 the airlines were aggressively expanding capacity to meet the
19 new demand post-COVID. There was a lot of pent-up especially
20 discretionary demand for vacations and for people to get back
21 on airplanes.

22 And I looked at the data from the evaluation of the TSA
23 throughput information as to how many people were actually
24 going into airports and going through security. Prior to
25 COVID, prior to March, it was around 2 million people a day.

1 For a year and a half or thereabouts, it was less than a couple
2 hundred thousand for the beginning of COVID, and it rose out of
3 the COVID-related period to about 90 percent of pre-COVID TSA
4 throughput in the month of July of 2021.

5 So there was, if you can picture it, a big drop in demand
6 for a period of about 15 or 14 months, and we're still not back
7 generally on a nationwide basis to the level we had in 2019
8 pre-COVID, but we're getting close.

9 Q. And so did I understand your testimony correctly that, as
10 of July of 2021, the number of passengers using the national
11 aviation system on a given day had reached 90 percent what it
12 was prior to March of 2020?

13 A. Right. For each of the days of July 2021, it was the
14 first month in which each day was 90 percent or greater of the
15 throughput that existed on average before in 2019.

16 Q. And what data was it that you looked at to determine that?

17 A. It's Transportation Security Administration scanning data,
18 how many people go through the checkpoints.

19 Q. And that's also publicly available?

20 A. Yes.

21 Q. Okay. So we got diverted a bit talking about the
22 coronavirus. I think previously we were talking about Delta
23 and what it's been doing at Boston Logan Airport. And did I
24 catch you testifying earlier that Delta has opened at least one
25 crew base in Boston in recent years?

1 A. It's Republic, a regional feeder to Delta that was I think
2 a complement of Delta having a hub here.

3 Q. And what base has Republic opened in Boston?

4 A. I think a pilot and flight attendant base from my
5 recollection. But Delta in 2019 had the aspirations of
6 building Boston obviously much faster than it's been able to
7 build it, given COVID, but they're now on track to exceed what
8 they planned in 2019.

9 And again, this is at odds with the analytical work that
10 was done in the case and we heard about the last couple of
11 days. And I would equate it to a weather report that predicted
12 a big storm four years ago that we can now look back and say
13 that storm never hit; in fact, it was a very sunny day and the
14 best weather we've ever had.

15 Q. Thank you, Mr. Akins. And I do want to make clear the
16 relationship between Republic, the outfit that opened the crew
17 bases recently, and Delta. What is that relationship?

18 A. Republic is one of a number of independent regional
19 operators that Delta utilizes to connect to flights at Boston.
20 They're Delta connection flights. And if you go to places, if
21 there was a flight to Burlington from Delta, it would probably
22 be a United connection on a Republic Airways E175 aircraft with
23 the Delta livery on the side of it. So Delta sells the tickets
24 that passengers use to get on Republic. In some instances,
25 American or United also use Republic, but Delta at Boston is

1 using Republic as a codeshare regional affiliate.

2 Q. I understand. Is that kind of like the difference between
3 American and American Eagle?

4 A. Yes, exactly the same. Only American Eagle, some of which
5 are owned, Endeavor is the only wholly owned for Delta.

6 Q. Okay.

7 A. And they also fly to Boston.

8 Q. So speaking about the growth at Boston Logan Airport as
9 seen in recent years, you mentioned Delta. We spoke it about
10 Delta. You also mentioned JetBlue. Can you speak about
11 JetBlue's experience in Boston in recent years?

12 A. Sure. JetBlue doesn't necessarily call their focus
13 operations hubs, but JetBlue has had a high growth and a focus
14 in Boston since prior to MESTL and has continued such growth,
15 again, with the impact of COVID interrupting that.

16 But now we have what I think from an economist's
17 perspective is an incredibly healthy mix of competition at
18 Boston, which has Delta competing against what's called the
19 Northeastern Alliance, which is American and JetBlue's alliance
20 to codeshare flights in the Northeast. And I noticed that the
21 hearing -- hearing was in the room next door to us regarding
22 that this week, that competition of Delta trying to best
23 JetBlue on routes that JetBlue already flies. And if you look
24 at a lot of the routes Delta is adding, they're right on top of
25 JetBlue or American. So that level of competition is sort of a

1 planner's dream to drive fares down and to offer more frequency
2 and a wider array of services, which is exactly what's
3 happening at Boston currently.

4 Q. So going back to -- we'll say going back to the time that
5 the MESTL law became effective in July of 2015, can you put a
6 number, either an absolute number or percentage number on
7 growth that we've seen in JetBlue's operations of Boston since
8 that time?

9 A. I did some math on this. I think I introduced it in one
10 of my reports, but JetBlue, between say July of 2015 and the
11 end of 2019 I think was at 34 percent growth in departures.

12 Q. So we've spoken about Delta's recent growth at Boston.
13 We've spoken about JetBlue's. What about the other carriers;
14 what's their experience been in Boston in the past six or seven
15 years?

16 A. There was a pretty big growth by Alaska pre-COVID, about
17 20 percent. Southwest I believe was 20 percent, and American
18 was flat and is now growing again.

19 Q. American is growing again?

20 A. Yes.

21 Q. In what time period?

22 A. Post-COVID, again, there's more of a focus on Boston by
23 American in their partnership with JetBlue than there was
24 pre-COVID, and I think that's in response to competition with
25 Delta.

1 Q. And I'm sorry. You I think mentioned earlier in your
2 testimony that JetBlue or perhaps American, that at least one
3 of the two had opened a crew base in Boston in recent years?

4 A. There's a crew base here from American for sure, but
5 that's not a recent opening.

6 Q. Sure.

7 A. The crew base that I know about that's new is Republic,
8 and Delta in correspondence with the sort of chicken-and-egg
9 problem that I think is kind of obvious here is that crew bases
10 generally open where airlines have hubs or significant amounts
11 of service.

12 So if Delta didn't have a crew base here before, and I
13 didn't focus on this because they weren't part of the case
14 until after I did my reports, it would be logical that if Delta
15 didn't have a crew base here, given the level of operations,
16 that they would put a crew base here. So if they didn't have
17 one here, it's highly likely they'd have one now.

18 MR. HASKELL: Got it. I'm going to hand out
19 Defendant's Chalk Number 6.

20 Q. Mr. Akins, is this also something that you prepared in
21 connection with your testimony in this case?

22 A. Yes.

23 Q. And what are we looking at here?

24 A. We're looking at a couple of representatives of the
25 average roundtrip fare in two different periods, 2015 and 2018.

1 And it's extracted from the A4A website online. And
2 essentially, it's all carriers, average fare, based on a state
3 or the U.S. average.

4 So I've got, the orange bars here represent the average
5 roundtrip passenger fare with inflation taken out. Both in
6 2015 and 2018, Massachusetts average was above the U.S.
7 average, as you can see, by about \$8 in 2015, \$393.30 above the
8 orange bar, and \$385.72 above the U.S. average bar.

9 Taking a snapshot in 2018, again, according to the
10 evidence we've heard before, this shouldn't happen with the
11 impact of MESTL, that Boston's, relative to U.S. passenger
12 fares, have dropped faster by almost 15 percent over a
13 three-year period versus about a 12 percent drop in the U.S.
14 average. And at the end of the day, the snapshot shows that
15 not only has Boston decreased faster but now has a lower
16 average fare in real dollars of \$334.53 versus \$340.28 for U.S.
17 average.

18 And that is a phenomenal impact of the growth at Boston,
19 coupled with the airplanes creating bases and hubs focusing on
20 Boston. And it's an incredible part of what I believe to be
21 this amazing success story here in Massachusetts about the
22 development of Boston airport, not just a growing place but as
23 a dynamically changing place that's taking advantage of the
24 inherent underlying economic value, the demographics as well as
25 the location of Boston Logan Airport in a way that's never been

1 there before.

2 Boston has got incredible drivers of air transport demand,
3 including higher education, high tech, medical facilities that
4 are world class, a huge dynamic population that's from a lot of
5 places that aren't Massachusetts or Boston that need transport
6 as well as this location which is the closest large geographic
7 airport to Europe.

8 So you combine all of those and you look at the services,
9 the routes, the drop in fares, and this is all a wonderful
10 story for the public benefit in Boston for what's happening as
11 determined by the carriers serving Boston on top of the MESTL
12 law.

13 Q. On Defendant's Chalk 6 here, I see the data begins in 2015
14 and goes through 2018. Why is that?

15 A. I believe at the time I put this chart together that was
16 the latest available data that A4A had on the website.

17 Q. And fair to say that -- well, when did you put this chart
18 together?

19 A. Sometime prior to December 27 of 2019. So the 2019 data
20 obviously wasn't in yet and wasn't available.

21 Q. And that's the time at which you prepared your expert
22 report for this matter?

23 A. Right. And I probably worked on this sometime during the
24 summer to the fall.

25 Q. Sure, sure. I suppose I should ask the same question. I

1 did mean to ask the same question with respect to the last two
2 chalks that we looked at, Defendant's 3, 4, and 5, those last
3 three, is that also why those chalks only represent data up
4 through 2018, 2019?

5 A. Right. And you'll notice at the bottom I footnoted that
6 for the latest available data, which is March 31 of each year.
7 So I tried to capture at the time I did this analysis the
8 latest available data that was available. And for those
9 chalks, those information, those bars, it was the year ended
10 March 31 because obviously 2019 hadn't been completed yet.

11 Q. Got it. Okay. We can put Defendant's 6 aside.

12 So I think earlier, Mr. Akins, you also testified about
13 the investment that has been and is being made at Boston Logan
14 Airport. Can you expand on that a bit.

15 A. Sure. I think when Delta first came here in 2002, they
16 realized that Boston was an older facility and they wanted to
17 upgrade it, and they put some money in 2002 into Terminal A. I
18 believe it was, you know, tens of millions of dollars.

19 What's happening today not only with the federal
20 government investing tens of millions of dollars in Terminal E,
21 which is the international terminal -- and Biden was just here
22 I think a week or two ago announcing that out of the
23 billion-dollar fund that the FAA has to allocate to airports to
24 develop services and facilities, Boston got the largest chunk
25 of that, which again suggests that the U.S. is banking on

1 Boston to be a large international gateway, okay. They're
2 upgrading Terminal E.

3 There's been billions of dollars put into Boston to
4 upgrade things that everybody here has flown through Boston not
5 only appreciates but at least sees the physical infrastructure,
6 the edifice of the airport is changing, not just on the runway
7 or lightings or striping in the parking lot but the physical
8 nature of the airport is changing and hopefully for the better.

9 Q. The one that comes to mind is the new rental car terminal.
10 Is that part of what you're describing?

11 A. Yes. Everything involved with the facilitations of
12 passengers and services at the airport. There's a master plan,
13 I think it's a good one, and I think it was needed to
14 essentially handle what we're seeing in terms of the growth and
15 demands on the airport that it wouldn't be possible without
16 investment to handle this new amount of demand. And they're
17 planning for the future, which is great.

18 Q. And does that reflect a certain level of partnership or
19 cooperation between the carriers and MassPort?

20 A. Sure. And it's the growth that we're seeing now that is
21 going to continue and that Boston has a very important future
22 in both Delta and JetBlue and American's operations on the east
23 coast. So it is an investment in the future.

24 Q. Look at Chalk 7. So Mr. Akins, is this another graph that
25 you prepared in connection with your testimony in this case?

1 A. Yes, it is.

2 Q. And did you prepare it around the same time you were
3 describing earlier, 2019?

4 A. Yes.

5 Q. Okay. And can you tell us what we're looking at here.

6 A. So I wanted to focus on something that we really haven't
7 talked about as far as I know in this room, which is the delays
8 that occur at Boston with each carrier for a variety of reasons
9 that we looked at earlier this morning.

10 Totaled together, not by any particular reason, I'm
11 looking at A4A flight departure delays of greater than 15
12 minutes within 2018. I picked the latest year that had a full
13 complement of months, and I looked at the months with the
14 highest delay of departures and the lowest. And so the blue
15 bar for, say, American on the left side shows that in the worst
16 performance month at Boston for American in 2018, they had 22.5
17 percent of their flights departing Boston late. The best
18 performing month was 10.8 percent.

19 And so I wanted to see the variability that airlines on a
20 daily basis or monthly basis are dealing with in terms of the
21 variation in absolute flight delay volumes occurring at Boston.
22 As you see, JetBlue, as I described earlier, has a higher kind
23 of latent amount of demand both in terms of the highest months,
24 33.3 percent, and the lowest month at 19.3 percent.

25 So JetBlue is generally viewed in the industry as having

1 the highest, if not the highest, amount of flights departing
2 with delays. And that's shown here. The variation between
3 JetBlue is about the average for all carriers, which is about
4 14 percentage points between the high and the low.

5 So airlines have to manage situations a lot of times that
6 they don't foresee or control the 14 percent gap between
7 month-to-month variability. And within those months there are
8 sometimes bigger variations on a daily basis due to weather or
9 other factors.

10 So we've got, the importance of this graph is to show that
11 there is no normal month or normal day. Flights depart Boston
12 with a background in a departure of around 21 percent delayed
13 flights on average in that particular year. And that's
14 generally the case in Boston. It's 21 percent. Sometimes I've
15 seen 23 percent, but overall the average is around the mid-20s
16 on an annual basis at Boston. So you've got a one in five
17 chance of having a flight delay right now in Boston or at least
18 in 2018.

19 Q. So let me just break down to be clear about the data we're
20 seeing reflected in this chart. First of all, does this draw
21 on the data that the carriers report to the U.S. Department of
22 Transportation that you testified about earlier?

23 A. Yes.

24 Q. And the delays that we see reflected in this chart, is it
25 all delays? Is it just that bucket of carrier-caused delays?

1 Is it some combination? What kind of delays are we looking at
2 here?

3 A. It's all five buckets combined.

4 Q. All five buckets combined, okay.

5 A. Right.

6 Q. You spoke a bit just a moment ago about, you know,
7 different airlines' tolerance, say, for delays. In your
8 experience, Mr. Akins, does a carrier commonly set a goal for
9 the amount of delay that it's expecting or is willing to
10 tolerate?

11 A. I don't think they set a goal in terms of, you know, the
12 maximum amount of delay they're willing to tolerate. I think
13 they set a goal for the allocation of staff to offset whatever
14 delays that they expect. But again, airlines can't control the
15 air traffic control system, the weather or other factors that
16 may influence cancellations or departure delays.

17 So it's sort of a crap shoot to say we're willing to
18 accept a certain amount of delays, knowing that many of the
19 delays that they experience are outside of their control. So I
20 think airlines try to staff in terms of carrier resources zero
21 delays. But again, there are so many other factors that
22 influence delays that that's only one of the other components
23 that could affect delays.

24 Q. And you also spoke in your testimony just now, Mr. Akins,
25 about the variability between the best months and the worst

1 months for a given carrier. Can you speak about how that
2 variability relates to the management of staffing that you
3 testified about a little while back?

4 A. Right. Again, the public data doesn't show us
5 staffing-related or crew-related delays. They tell us
6 carrier-related delays. So as far as the internal data
7 systems, I don't have a dataset or a view into those internal
8 data systems unless I've been provided it by the carrier in
9 situations like this. So I don't have a good read across these
10 carriers as to what's being done in terms of measuring this.

11 But obviously, as I said before, each day in history has
12 its own unique profile based on weather, based on events, based
13 on day of the week. And carriers recognize that, and there's a
14 history there. And so in the past, if there is a chance for
15 lower or higher staffing issues than are expected, carriers
16 will generally amend their staffing of reserves or their
17 assignments of open time to essentially fill in those potential
18 forecast voids in staffing.

19 So it's an internal function. And I think they do a
20 really incredible job. And again, it's happening today, it's
21 happening tomorrow, it's happening at every airport with every
22 airline that they're having to cover staffing issues on a
23 normal basis for the nature of their business.

24 Q. Let's take a look at Chalk 9, please. So is this also a
25 graph that you prepared in connection with your testimony in

1 this case, Mr. Akins?

2 A. Yes, it is.

3 Q. And walk us through this. What are we looking at here?

4 A. So we're looking at essentially two graphs. The one large
5 line graph that we see all the squiggly lines on has two
6 components. The orange component is the departure delays of
7 all A4A carriers on average and the percent of departure delays
8 that were carrier-caused, again, that bucket of 42.

9 So if you're looking at the impact of MESTL on carrier
10 delays, we can't look at from public data those that are
11 staffing-caused. All we know is it's part of that bucket of 42
12 items. So this is not a very clear indicator of impact of
13 anything from MESTL on airplane or aircraft delays. It's
14 essentially saying, within the bucket of delays that are
15 carrier-caused, the orange line represents each month's value
16 of the percent of A4A flights combined that were late due to
17 carrier causes.

18 Q. And to find more fine-grained information about the
19 specific cause of a delay, you can't get that from public
20 sources. You would need to go to a carrier's internal data to
21 find that?

22 A. Yes, yes, you would. And the blue line represents the
23 arrival delays at Boston from other places. And I think it's
24 kind of interesting that the blue line and the orange line,
25 that is flights coming into Boston that are late with the blue

1 line flights that are departing, are very close together due to
2 carrier causes.

3 And again, we have this discussion that we had earlier
4 today about, if the orange line represents -- sorry, the blue
5 line represents departures that are carrier-caused, it
6 completely excludes departures that were late aircraft-caused.
7 Right? Because that's the bucket that wouldn't be represented
8 here.

9 But it is interesting to me that the orange line arrivals
10 into Boston as a percentage -- sorry -- the blue line arrivals
11 into Boston looks very similar to the orange line, and they
12 move sort of in the same direction.

13 Q. So let me break this down and make sure that we have this
14 right. So the blue line we see on the graph is the percentage
15 of flights that are arriving in Boston and are arriving at a
16 delay; is that right?

17 A. Right, due to carrier causes.

18 Q. Due to carrier causes. And that delay, because you're
19 basing it on information that's recorded to and provided by the
20 U.S. DOT, we're talking about 15-minute-plus delays here?

21 A. Yes.

22 Q. Okay. And so the orange line is the percentage of flights
23 out of Boston that are delayed for carrier causes by more than
24 15 minutes; is that right?

25 A. Yes, on a monthly basis for the period shown.

1 Q. Got it. And so is it correct to think that where the blue
2 line for arrival delays into Boston is higher for a given month
3 than the orange line of departure delays out of Boston, that
4 indicates that time is being made up on the ground?

5 A. It could be on average in a month that there was times
6 when the schedule essentially recovered some of the inbound
7 flying. But again, what isn't represented here is the percent
8 of departures that were not carrier-caused but were
9 attributable to other causes. And again, it's this gray area
10 of where do late aircraft fit.

11 So if a flight is coming in late due to carrier causes, it
12 seems to me it fits in two buckets. It's in the carrier-caused
13 and the late-arriving flight. So I don't know how to sort out
14 the arrival piece. But I think the important part is that up
15 in that little square in the top with the bar charts that the
16 blue side represents arrivals into Boston, which are less
17 reflective I think of the MESTL impact, as Dr. Lee has pointed
18 out, but I think the orange lines, the orange bars that show
19 departures from Boston on average for all A4A carriers combined
20 represents a decrease, which is surprising, and it's against
21 the forecast of what the other side has suggested would happen
22 at Boston with the implementation of MESTL.

23 Q. And what you're referring to there is the box at the top
24 right of the chart that includes a small imbedded bar graph?

25 A. Right.

1 Q. So what that shows is that the monthly percentage of
2 flights that were delayed for carrier causes prior to July 2015
3 at Boston departures was 5.27 percent. Am I looking at the
4 right thing?

5 A. Yes.

6 Q. And then the percentage of flights after MESTL's effective
7 date in July of 2015 that were delayed by more than 15 minutes
8 out of Boston for carrier-caused reasons is 5.13 percent?

9 A. Right. I would say it's at worst flat but at best it's a
10 little bit less. And that's the period pre to post.

11 Q. Got it.

12 A. You can see it's flat. It doesn't take a real analysis.
13 There's no jump in the data that I can discern from this.

14 Q. So I think we can leave it up. So from all of this
15 analysis and this data that you reviewed, Mr. Akins, do you
16 have a view of the impact -- you're familiar with the
17 Massachusetts Earned Sick Time Law, yes?

18 A. Yes, yes.

19 Q. Do you have a view of the impact that enactment of that
20 law in July 2015 and the various carriers' choice to comply
21 with that law with respect to certain categories of employees,
22 do you have a view of how that has affected carrier on-time
23 performance at Boston Logan Airport?

24 A. Let me answer it in a slightly liberal and creative way.
25 That if I didn't know and was a martian and landed in this room

1 what ESTL was, I would think it was some type of airline growth
2 stimulant that actually has caused fares to go down and traffic
3 to explode at Boston in a way that hasn't been seen here
4 before.

5 Now that I know what it is and I know the forecast of what
6 the impacts were supposed to be based on analytical work by Dr.
7 Lee and his team, none of that has occurred. In fact, I think
8 this is an incredible empirical rebuttal in Boston with the
9 experience we've had since MESTL and with all of the new routes
10 and services and carrier bases and hubs and growth that MESTL
11 does not seem to have any impact whatsoever on the operations
12 in Boston.

13 And I've held that view since I first opened up my report
14 and started critiquing what Dr. Lee had done. And as time has
15 gone on, this case is getting stronger, that it does not seem
16 that carriers are doing the things that would be suggested by
17 Dr. Lee in his forecast.

18 MR. HASKELL: If I could have a moment, Your Honor.

19 THE COURT: Yeah.

20 MR. HASKELL: Your Honor, we have no further questions
21 for Mr. Akins at this time. And it looks like we're wrapped up
22 by 11:25.

23 THE COURT: And I screwed up the schedule here. So
24 Kathy, my apologies for this. I just remembered I had a call
25 at 12:00. So would you guys mind taking an hour now, like

1 11:30 to 12:30? Sorry, Kathy, about that.

2 MR. CARROLL: That's fine.

3 THE COURT: Does that work for everybody else? Is
4 that okay with you, Kathy?

5 COURT REPORTER: Yes, yes, Your Honor.

6 THE COURT: That works for us, too. Let's take an
7 hour. We'll be back at 12:30, hour and five minutes. Thanks,
8 everyone.

9 Beginning cross-examination, so no more talking to
10 them. You can have lunch with them, if you want.

11 THE WITNESS: I don't want to talk about this.

12 (Recess, 11:25 a.m. - 12:33 p.m.)

13 THE COURT: Before we start, you gave me the
14 deposition designations the other day.

15 MR. HASKELL: Yes.

16 THE COURT: Is this everything I'm supposed to read?

17 MR. HASKELL: In terms of -- it's --

18 THE COURT: This is what you want me to read?

19 MR. HASKELL: Those are the deposition designations
20 from the three American Airlines keepers that relate to the
21 reports. There's going to be a few more deposition
22 designations coming, but...

23 THE COURT: But the idea is that -- I'm noticing that
24 some of it's redacted. So you're just -- you've not redacted
25 the parts of it you want me to read?

1 MR. HASKELL: That's correct. That's correct.

2 THE COURT: What?

3 MR. CARROLL: May we begin, Your Honor?

4 THE COURT: Oh, sorry.

5 MR. CARROLL: I'm sorry. Mr. Akins is getting a head
6 start on my cross-examination.

7 THE COURT: Oh, I'm sorry.

8 THE WITNESS: I'm done.

9 THE COURT: I'm sorry.

10 MR. HASKELL: We blacked out the portions that nobody
11 designated.

12 THE COURT: Okay. You shut that binder. And we can
13 finish our conversation.

14 MR. CARROLL: I'm sorry for interrupting, Your Honor.

15 THE COURT: That's okay. You had -- I thought I was
16 boring you, which is entirely possible but you're usually more
17 subtle than that.

18 Go ahead, Mr. Carroll.

19 CROSS-EXAMINATION BY MR. CARROLL:

20 Q. Good afternoon, Mr. Akins.

21 A. Good afternoon, Mr. Carroll.

22 Q. Let's start with what you termed the "incredible empirical
23 rebuttal."

24 Now, your testimony this morning emphasized at some length
25 the great growth at Logan Airport, correct?

1 A. Yes.

2 Q. And you attempt to connect that up, that growth, with
3 MESTL, but you never once said this morning that of all the
4 airlines we're talking about at Logan, only one of them fully
5 complies with MESTL, correct?

6 A. That's my understanding, yes.

7 Q. But you didn't bring that up this morning, right?

8 A. I wasn't asked.

9 Q. And the only airline that fully complies with MESTL didn't
10 grow during the period you're talking about, right?

11 A. That's correct.

12 Q. And you didn't bring that up either, did you?

13 A. I wasn't asked about it.

14 Q. We'll come back to -- you know, it's American Airlines,
15 correct?

16 A. Yes.

17 Q. That's the only one that fully complies. Okay.

18 And the largest of all the airlines, the one that has the
19 most flights by far at Logan Airport and that grew
20 substantially during the period you're looking at, is which
21 airline?

22 A. JetBlue.

23 Q. Right.

24 And JetBlue doesn't comply at all with MESTL, correct?

25 A. That's my understanding.

1 Q. But when it came to your opinions, you thought they did,
2 correct?

3 A. I believed they did, yeah.

4 Q. Let's look at -- let's look at paragraph 17. That's going
5 to be in your binder, so this is binder PI 528. I want to
6 direct your attention to page 17 of your report.

7 A. Do you want me to open it?

8 Q. Yes. You can look at it now.

9 A. Okay. And this is the --

10 Q. This is your expert rebuttal report.

11 A. Okay. Page --

12 Q. That is paragraph 17.

13 A. I see it.

14 Q. We can use the screen but if you want to consult your
15 report --

16 A. I'll trust the screen.

17 Q. Okay. So when you came to your opinions in this case, you
18 said, "All A4A carriers operating in Boston, except Alaska,
19 have had four years experience complying with ESTL."

20 Now, you didn't know that you were wrong about JetBlue,
21 did you?

22 A. As the sentence was prefaced, "It is my understanding," so
23 yeah.

24 Q. What do you mean, "as the sentence was prefaced"?

25 A. You didn't bring in the part or underline where it says,

1 "It is my understanding that all A4A carriers..."

2 Q. Well, you say are complying with the ground crew
3 employees, that's right. And you thought JetBlue complied with
4 ground, right?

5 A. I did, but I also know that JetBlue outsources its ground.

6 Q. Well, outsourced or not, it didn't comply, right?

7 A. It didn't comply.

8 Q. And you thought it did, right?

9 A. I thought they did.

10 Q. Okay. So the fact that they outsource or not doesn't
11 really matter. You were assuming they complied when, in fact,
12 they didn't, correct?

13 A. Correct.

14 Q. Okay. And so what you're attempting to do here in a
15 case -- this case involves what it would mean for the airlines
16 to fully comply with MESTL, correct?

17 A. Yes.

18 Q. Right. And you're trying to draw conclusions tying growth
19 to airline behavior when the data you're relying on is fully
20 infused with airlines not complying with MESTL in whole or
21 part, correct?

22 A. "Fully infused." It has data from carriers that didn't
23 comply, correct.

24 Q. Well, the only one that did is American, right?

25 A. Correct.

1 Q. And relative to JetBlue or Delta or United, it's
2 relatively small, correct?

3 A. Relative to JetBlue, yeah, those guys are small.

4 Q. And did you perform any kind of regression analysis to
5 attempt to control for variables such as MESTL compliance or
6 noncompliance?

7 A. Nope.

8 Q. But you're familiar with what regression analysis is,
9 correct?

10 A. Yes.

11 Q. But you just didn't do any of it?

12 A. I wasn't tasked to do it. We had a different professional
13 that we heard from yesterday.

14 Q. Well, you're talking about Mr. Tregillis from yesterday?

15 A. Yes.

16 Q. He didn't do it either, did he?

17 A. Didn't do what either? To control for the --

18 Q. He didn't attempt -- other than a regression he did with
19 respect to Virgin and American, he didn't attempt to perform a
20 regression analysis of the kind that Dr. Lee performed,
21 correct?

22 A. No.

23 Q. I'm sorry. I didn't hear you.

24 A. No.

25 Q. Okay. Thank you.

1 You introduced yourself as an air transport economist; is
2 that right, Mr. Akins?

3 A. Yes.

4 Q. You've got no Ph.D. in economics?

5 A. No, I don't.

6 Q. And you don't have a master's degree in economics either,
7 do you?

8 A. I've got what I consider to be the equivalent of a
9 master's from LSE.

10 Q. Well, does LSE consider it the equivalent of a master's?

11 A. I think they do. A postgraduate degree. It's a diploma.
12 I got a mark of merit in it. I studied air transportation.
13 There was an MSC above that, an MPhil, and a Ph.D.
14 qualification, none of which I got.

15 Q. Well, the London School of Economics offers master's
16 degrees in economics, doesn't it?

17 A. Not MAs. MSCs. It's different than here.

18 Q. Okay. In any event, you don't have one?

19 A. No.

20 Q. And you've never been an employee at a significant
21 airline, correct?

22 A. As a consultant, yes, but not a direct employee.

23 Q. Not as a consultant but actually as an employee with
24 responsibility, you've never been that, right?

25 A. No.

1 Q. And so you talked a lot about your experience with crew
2 scheduling and your experience with coding and your experience
3 with sophisticated staffing algorithms and alike at some
4 length. You've never had any direct personal responsibility
5 for any of those functions, correct?

6 A. That's correct.

7 Q. And mostly what you do professionally is work closely with
8 unions, correct?

9 A. It changes. Time to time there is sort of periods when I
10 work more with unions than not. But yes, I think that's
11 correct recently.

12 Q. Over the last five or six years, you've been mostly
13 working mostly with unions, correct?

14 A. Yeah, I think that's correct.

15 Q. And you've been hired in a case involving Atlas Airlines
16 to criticize Dr. Lee's opinions, right?

17 A. That's not why I was hired.

18 Q. Well, did you in a case involving Atlas Airlines criticize
19 Dr. Lee's opinions?

20 A. Yes.

21 Q. Okay. And that was a case in which Atlas Airlines was
22 claiming that the pilots for Atlas were refusing to take any
23 overtime slots and were calling in sick at the last minute and
24 otherwise doing things to impair the Atlas operation, correct?

25 A. Correct. And I'd assumed -- I'd done two analysis for

1 Atlas. One was a contract arbitration. And I think you're
2 referring to a previous issue before the District of Columbia
3 U.S. Court --

4 Q. Yeah, that's --

5 A. -- which is a different thing, so I just had to reset.

6 Q. That's okay. So I want to talk about the court case --

7 A. Okay.

8 Q. -- where you were hired by the union as an expert contra
9 to Dr. Lee.

10 A. That's right.

11 Q. We're together?

12 A. Right.

13 Q. Right. Am I right, generally speaking, what was happening
14 there was the pilots were not picking up overtime or calling in
15 sick at the last minute or otherwise doing things to interfere
16 with the operation of the airlines?

17 A. That's what it was about, yes.

18 Q. Right. And in that case, Dr. Lee did a regression
19 analysis to attempt to isolate the reasons for the delays that
20 were occasioned by the interference with the airlines and he
21 demonstrated it was because of this change in behavior of the
22 pilots that they were taking these steps in the middle of union
23 negotiations to try and get more pay, correct?

24 A. That's what he claimed, yes.

25 Q. That's what he claimed. And you claimed that, well, maybe

1 they weren't taking any overtime because they wanted to spend
2 more time with their families, right?

3 A. I can't remember what I said. I mean, it's a long time --

4 Q. Well, would it remind you if one of the things you also
5 said was maybe they were refusing to take any overtime during
6 the collective bargaining negotiations because they just didn't
7 need the money? Does that sound right?

8 A. It could be.

9 Q. Maybe I can refresh you. Let's take a look at PI 534.

10 A. Is it on the screen or in the book?

11 Q. It will come up. Mr. Shorr is good but he's not that
12 good.

13 Okay. And so you'll recall that was a case that went --
14 it was in the district court and it went up, as you said, to
15 the United States Court of Appeals for the District of
16 Columbia, correct?

17 A. Yes.

18 Q. And the court there considered the evidence that was in
19 front of the district court, correct?

20 A. Yes.

21 Q. And the district court had rejected your opinions,
22 correct?

23 A. In some instances, yeah. I didn't really follow all the
24 ins and outs of the decision but I believe the union was happy
25 with half the decision and not happy with the other half. So

1 I'm not -- I wasn't really --

2 Q. Was there any part of the decision you were happy with?

3 A. It didn't matter to me. I didn't really care. I just
4 presented what I saw.

5 Q. What the court said here, and I've got it highlighted --
6 let me show you, Mr. Akins -- the court said, in part, "The
7 district court did not err in accepting Dr. Lee's reasoned
8 analysis over Mr. Akins's unsupported speculation."

9 Do you see that?

10 MR. HASKELL: What page of PI 1534 are we on here?
11 I'm trying to follow along.

12 MR. CARROLL: You can look at page 13 on the Westlaw
13 printout that's in your binder or it's right on the screen.

14 MR. HASKELL: Thank you.

15 Q. All right. And so what you offered to the court in that
16 case was unsupported speculation, correct?

17 MR. HASKELL: Objection.

18 A. I'm not sure --

19 THE COURT: Basis?

20 MR. HASKELL: Mr. Carroll is speaking about the Court
21 of Appeals description of the district court's finding. I
22 don't think it's a fair question of Mr. Akins whether he
23 offered unsupported --

24 THE COURT: You can rephrase the question. I got it.

25 MR. HASKELL: Thank you.

1 Q. And you hadn't recalled earlier, but if you look at your
2 screen in the upper left, it says "The union also suggests this
3 change might have occurred because individual pilots chose to
4 decline open time for personal reasons such as a desire to
5 spend more time with their families or because they did not
6 need the money."

7 Do you see that?

8 A. Yes.

9 Q. And that's part of the reasons that you suggested for the
10 change in pilot behavior, correct?

11 A. I don't see my name near that. Where are we pulling this
12 from? Oh, Mr. Akins. Okay. Yeah. I think the unsupported
13 speculation, if you read above that, had to do with
14 deadheading. Didn't it?

15 Q. Pardon me, sir?

16 A. Didn't the -- part of the page here that you're not
17 highlighting in yellow have interest about deadheading
18 policies?

19 Q. Yeah, I think there's a reference to deadheading in there.

20 In any event, the court rejected your analysis as
21 speculation --

22 A. Sure.

23 Q. -- and accepted Dr. Lee's regression analysis, correct?

24 A. You know, I'll take your word that they accepted it, but I
25 didn't -- this was in the appellate level. I was completely

1 out of the picture. So this is the first time I'm even seeing
2 or hearing about any of this.

3 Q. You don't have to take my word for it. Just at the bottom
4 right, in the section, it's not all the way highlighted but it
5 says -- the appellate court is talking about what the district
6 court did in affirming it. It says, "The district court did
7 not reject each theory of why an individual pilot might decline
8 open time. The court adequately made clear it credited
9 Dr. Lee's conclusion that this change did not merely stem from
10 a series of individual decisions."

11 Right?

12 A. Sure. Yes.

13 Q. So I won't ask if that refreshes your recollection if
14 you've never seen it before but you know the case, right?

15 A. I do.

16 Q. Now, we talked a little bit earlier about American
17 Airlines. You talked about this wonderful explosive growth and
18 I want to just explore that with you.

19 You testified that American didn't grow, but you testified
20 this morning that American stayed flat, right?

21 A. Depending on which period you look at. I mean, there were
22 around -- I'm thinking, off the top of my head, 27,000, 25,000
23 operations a year, and I think that kind of stayed within a
24 band of flat depending on how far back and how far forward you
25 go, because we had numerous periods of sort of looking at this

1 in my expert report and my summary report. So I would think
2 they were, at best, flat.

3 Q. Okay. And that's something you studied in connection with
4 forming your opinions in this case?

5 A. Yeah, a while back.

6 Q. A while back. Okay.

7 And you understand that US Airways and American merged
8 back in 2013, correct?

9 A. Oh, yeah, I was part of that.

10 Q. Okay. So it should be very familiar to you that while
11 once separate airlines, now they're the same airline, correct?

12 A. Right.

13 Q. Right.

14 After the merger, planes stop flying with the United --
15 the US Airways flag some time in 2015, correct?

16 A. Yeah. There was a rebranding throughout the fleet with
17 the ugly design that Tom Horton picked unfortunately.

18 Q. Okay. Well, let's focus on your testimony about them
19 staying flat.

20 Take a look, please, at Exhibit PI 536, which is in your
21 binder, sir.

22 MR. CARROLL: And I'm going to ask Mr. Shorr to put it
23 up.

24 A. Okay.

25 Q. And this is that same -- you recognize this data as that

1 same Department of Transportation data that you use, right?

2 A. Not in this format.

3 Q. Okay. Well, I'll represent to you that this chart comes
4 from the DOT data and what we're going to look at is the total
5 flights for American Airlines out of Boston in 2015.

6 A. Right.

7 Q. Right.

8 And you can see there, the total is just a hair under
9 20,000 flights, correct?

10 A. Yes.

11 Q. But in 2015, some flights were still going out with the
12 USAir flag, right?

13 A. With the US Airways livery, but they were American
14 Airlines flight numbers.

15 Q. They were indeed. So let's see what the number was with
16 the US Airway livery.

17 MR. CARROLL: That's PI 537, Mr. Shorr.

18 Q. And you see that is 8,510 flights, correct?

19 A. I'm not sure what that right side is. I don't see a US
20 Airways...

21 Q. Well, if you look at the top of the page --

22 A. Right. It says "flights, American," and it's the same
23 totals you just showed me.

24 Q. Yeah. Well, let me pull it up here.

25 A. I guess it's the problem on the 537, that it's not tied to

1 anything.

2 Q. So PI 537, you see at the top of the page, it says
3 "Flights (US Airways-Boston, MA, Logan International)"?

4 A. I see this big bar. I don't see on the top of -- oh,
5 okay. I do now. Sorry.

6 Q. Okay. We're together?

7 A. Yes.

8 Q. All right. So we saw just under 20,000 -- just under
9 20,000 American flights. Now we're looking at the USAir --

10 A. Right.

11 Q. -- and we see -- and I'll represent to you this was the
12 last year they were flying under the flag USAir --

13 A. Right.

14 Q. -- 8,500, right?

15 A. Right.

16 Q. So you add that together, in 2015, preMESTL, we get
17 roughly 28,000 flights, correct?

18 A. Yes.

19 Q. Now, that's before American started complying with MESTL,
20 right?

21 A. Because the law didn't apply at that point.

22 Q. That's right.

23 So now let's jump ahead and look at 2019. You studied the
24 period 2015 to 2019 in the numbers you showed us this morning,
25 right?

1 A. I think that was from the supplemental, yeah.

2 Q. Yeah. Okay. So now we're going to do the same thing.

3 We're going to look at 2019 and see what happened to American.

4 Now, by 2019, there's no more USAir; it's all going out
5 under American, correct?

6 A. Correct.

7 Q. Okay. How many flights from American in Logan in 2019?

8 A. It's blocked off. Is that -- it says 24,992, and there's
9 a number -- a big number that says 25,086. Sorry, I was
10 looking at the middle column.

11 Q. So the total is 25,086, correct?

12 A. Right.

13 Q. So during the period you were talking about this morning
14 of the explosive growth --

15 A. Right.

16 Q. -- American Airlines lost thousands of flights out of
17 Boston Logan, correct?

18 A. I don't think they lost them. They chose not to fly them.

19 Q. They didn't fly, correct?

20 A. That's correct.

21 Q. So in that same period of explosive growth the only
22 airline, the only one that fully complied with MESTL, declined
23 by thousands of flights, correct?

24 A. That's correct.

25 Q. You didn't mention that anywhere in your testimony or your

1 report, did you?

2 A. No. I didn't mention a lot of things, like what's going
3 on now with American.

4 Q. Did you attempt to do any kind of analysis as to whether
5 the growth that you observed this morning in the airlines,
6 other than the MESTL compliant airlines, would have been even
7 more in the absence of MESTL?

8 A. I don't know how to do that.

9 Q. You also gave some testimony about lower airfares
10 prevailing at Logan, correct?

11 A. Correct.

12 Q. Now, I think you testified earlier that the carrier that
13 has experienced very significant growth and is by far the
14 largest at Logan is JetBlue, correct?

15 A. Yes.

16 Q. All right. And you'll agree with me that JetBlue is a
17 low-cost, low-fare airline, correct?

18 A. That's correct.

19 Q. So doesn't it stand to reason that if JetBlue is growing
20 significantly and it's a low-cost, low-fare airline, that's
21 going to have a pretty big impact on the average fares out of
22 Logan Airport?

23 A. Yes. That's because other carriers tie into what JetBlue
24 is charging and lower their fares as well. That's part of the
25 strategy of buying Spirit.

1 Q. And JetBlue doesn't comply with MESTL at all, correct?

2 A. Correct.

3 Q. I want to take a look at one of the exhibits that you had
4 up this morning. It's page 9 of the defendant's demonstrative.
5 I don't know if I could impose -- there you go.

6 A. Sure.

7 Q. Thank you.

8 A. Sure.

9 Q. You remember this one?

10 A. Yes.

11 Q. And you say this is the average monthly share of Boston
12 departures and arrivals that were delayed due to carrier
13 causes, right?

14 A. That's correct.

15 Q. And this, too, is part of the great empirical rebuttal,
16 right?

17 A. Yes.

18 Q. Now, when you put this together, you used simple averages
19 from all the airlines, correct?

20 A. I used an unweighted average, correct.

21 Q. Okay. And so what that means, in simple terms, so you
22 treated Alaska Airlines's delay rate as having the same weight
23 in your analysis as JetBlue?

24 A. That's correct.

25 Q. How many times bigger is JetBlue than Alaska?

1 A. You mean corporate-wise or at Boston?

2 Q. Flights out of Logan.

3 A. I don't know, ten, maybe more.

4 Q. It's more than ten, isn't it?

5 A. I don't know. I mean, show me. I don't know off the top
6 of my head. I don't keep --

7 Q. Well, Alaska only runs a handful of flights a day, right?

8 (Reporter requests clarification.)

9 MR. CARROLL: I'll slow down. Sorry.

10 Q. Alaska only runs a handful of flights a day out of Logan,
11 right?

12 A. That's correct.

13 Q. And JetBlue runs dozens and dozens --

14 A. Hundreds.

15 Q. -- every day out of Logan? Hundreds and hundreds, right?

16 A. Yes.

17 Q. Right, and so -- well, did you look at this same analysis
18 at all on a weighted-average basis?

19 A. Yes.

20 Q. Why isn't that in your report?

21 A. Because I think what I found is that JetBlue has an
22 inherently high carrier caused delay preESTEL and postESTEL and
23 if you weight them and if we're looking for the impact of
24 MESTL, it clouds and it biases the departure delays because
25 they bring in by growing a higher background level of delays.

1 That's why I did the average of averages because I thought
2 it was more representative of the average A4A carrier. Not
3 because one carrier that's got two and a half times the carrier
4 caused delay rate of everybody else.

5 Q. If you're looking for the impact of MESTL, you can't look
6 at JetBlue, can you?

7 A. No, you can't.

8 Q. You criticized Dr. Lee in his report for making the point
9 that the existence of MESTL could constitute a reason for an
10 airline to consider closing a base or refrain from making a
11 decision to open a base in Boston Logan, right?

12 A. Generally, yes.

13 Q. Right. And you say that's a hypothetical exaggeration,
14 right?

15 A. I think it's contrary to the facts.

16 Q. You weren't here to hear any of the fact witnesses, were
17 you?

18 A. No.

19 Q. Did you at least take the time to read their testimony in
20 the transcript?

21 A. I didn't have much leisure time in the last week or so.
22 So I've read a few, but not all.

23 Q. Who have you read?

24 A. Dr. Lee and the witness, whoever that was before him that
25 morning.

1 Q. Do you know the names of any of the fact witnesses in the
2 case?

3 A. Yeah. I know Cindi Simone. But I don't -- I'm not
4 keeping up with the case as if it's an important thing. I do
5 my job, I move on to other stuff. So my relationship to the
6 case is to do my work, to back up my reports and show up here.

7 Q. Okay.

8 A. I didn't follow who was in the cast.

9 Q. So your opinions aren't impacted by the facts here?

10 MR. HASKELL: Objection.

11 THE COURT: Sustained.

12 Q. Let's take a look at some testimony that was given in the
13 case from Mr. Byrnes. This is Brady Byrnes, the vice president
14 of flight service for American, and I'm going to show you Trial
15 Transcript 606.

16 A. Right.

17 Q. Right.

18 Are you aware that last week there was an announcement by
19 American that they were going to close the flight attendant
20 base in San Francisco?

21 A. Yes.

22 Q. Okay. And Mr. Byrnes testified that one of the main
23 factors going into that decision, the contributing factors is
24 the fact that it was unreliable in terms of high absenteeism
25 rates. He's talking about the flight attendants.

1 A. Right.

2 Q. Do you have any factual basis to disagree with that?

3 A. No. San Francisco had almost the most consistently
4 absentee rates of any base and it's been like that for a
5 decade. Los Angeles exceeds it. Boston is at the bottom of
6 the absentee ranks consistently.

7 Q. Let's take a look at the testimony that Michael Sasse gave
8 from the trial. Mr. Sasse is the managing director of crew
9 scheduling, planning, and administration for United. I want to
10 show you his testimony.

11 And the question was: "Has United ever closed a base due
12 to high sick rates among flight attendants?"

13 And he says: "Yes. Recently, so in 2021, we
14 announced" -- he goes on to say, "close the Seattle satellite
15 base, which we ultimately closed in May of 2021. It was
16 directly attributed to sick rate."

17 Do you see that, sir?

18 A. Yes.

19 Q. You would acknowledge that high flight attendant
20 absenteeism can interfere with the airline operations, correct?

21 A. Correct.

22 Q. And it can contribute to a decision to close a base,
23 correct?

24 A. Correct.

25 Q. And you'd also agree that -- strike that.

1 Let me show you testimony from Lindy Johnston. And Lindy
2 Johnston is the director of in-flight crew planning at
3 Southwest.

4 She testified that Southwest does take into consideration
5 laws like the Massachusetts Earned Sick Time Law when
6 considering whether to open a potential new flight attendant
7 base.

8 Do you see that?

9 A. Yes.

10 Q. Do you have any factual basis to disagree with that?

11 A. I don't know the woman and I don't know -- I mean, what
12 was her title. Lindy Johnston?

13 Q. Yeah. Her title was the director of in-flight crew
14 planning --

15 A. Okay.

16 Q. -- and analytics at Southwest Airlines.

17 A. Okay. I don't know her. I guess I should because I work
18 with them a lot.

19 Q. Well, you work with their unions, right?

20 A. Well, I work with their management team a lot because
21 they're sitting at the table.

22 Q. But you're not working with them; you're working on behalf
23 of the unions, correct?

24 A. Right.

25 Q. Southwest Airlines doesn't hire you, correct?

1 A. Not that I can recall, no.

2 Q. Back to Ms. Johnston's testimony. Do you have any factual
3 basis to disagree?

4 A. No.

5 Q. And you would acknowledge, would you not, sir, that flight
6 delays happen because of flight attendant absenteeism
7 sometimes?

8 A. Sometimes, yes.

9 Q. And if there was a flight leaving out of Logan going to
10 Dallas-Fort Worth, let's say the flight attendants -- one
11 flight attendant didn't show up and the flight had to leave an
12 hour late. It was an hour late getting into Dallas. And the
13 next flight out of Dallas was an hour late. The flight out of
14 Dallas being an hour late, that would be coded late due to late
15 arriving aircraft, correct?

16 A. I don't know. I don't know what that would be coded as.
17 Again, is it coded as carrier caused because the flight
18 attendant was late or didn't show up? That's in that box of
19 42. So is it a late arriving aircraft because of that? And
20 that's kind of the gray area I was discussing this morning. I
21 don't know how airlines deal with that.

22 Q. You testified this morning about sophisticated systems
23 airlines use for staffing, correct?

24 A. Yes. Yes.

25 Q. And you've seen those in action as a consultant to the

1 industry or a representative of unions, correct?

2 A. Yes.

3 Q. Okay. Do you understand that all the sophistication that
4 the airlines may have notwithstanding, there's times when they
5 simply can't fill overtime slots, for example?

6 A. When you're talking about ground crew? There's no
7 overtime in the aircrew.

8 Q. Let's talk about the ground crew.

9 A. Okay.

10 Q. There's been testimony in this case from the head of
11 United's operations at Logan that there are times when he just
12 can't get anybody to fill the overtime slots, particularly in
13 the summer or when there's bad weather.

14 Do you have any reason to disagree with that?

15 A. Which work group are you talking about?

16 Q. Ramp people.

17 A. Ramp, no. I think that's a problem.

18 Q. If you can't fill the ramp -- if you can't fill the ramp
19 spots and the airline has to operate short shift, it's going to
20 impact the service the airlines provides to the traveling
21 public, correct?

22 A. Not necessarily. It could. There's a likelihood it
23 could.

24 MR. CARROLL: Mr. Akins, thank you very much. That's
25 all I have for the moment.

1 MR. HASKELL: Just a few on cross-examination.

2 REDIRECT EXAMINATION

3 BY MR. HASKELL:

4 Q. Mr. Akins, you testified just a moment ago that short
5 staffing on, say, the ramp could impact the traveling public.

6 What did you mean by that?

7 A. Well, I know from experience, again, that -- in particular
8 Southwest at Denver has had a really hard time getting rampers
9 not just to show up for overtime but just to show up, and part
10 of it was the market rate for work had eclipsed what was in the
11 contracts at airlines.

12 It's happening kind of across the U.S. but most workers
13 aren't unionized and there's more flexibility, say, for
14 carriers.

15 So in the Southwest example, they were chronically short
16 of folks to transfer bags from the flights to the terminal or
17 to marshal planes into gates. And that was causing flight
18 delays in the extreme.

19 In terms of other sort of better staffed areas that pay
20 sort of the market rate, carriers have had an easier time
21 filling staffing positions, but I'm thinking of the sort of
22 postCOVID environment.

23 If you think preCOVID, the ability for three rampers to do
24 the work of four is different than the ability of one pilot to
25 do the work of two. That's not allowed. Right? But there's

1 some fungibility between the staffing that occurs at different
2 bases between the jobs. One guy's running the tug, another guy
3 is in the bin. There are two guys are in the bin, which is the
4 lower lobe of the airplane. They're throwing bags.

5 Southwest has a very skeletonized crew. If you look at
6 what American or Delta's got, there's way more people around
7 airplanes. Right? And so Southwest might be a bit tighter in
8 terms of staffing but there still is the ability to -- if
9 people are there and show up for work, to force either
10 mandatory overtime or allow for voluntary overtime.

11 And I'm not sure what Mr. Sasse said because I didn't read
12 it, but generally the contracts I've seen, and I don't think
13 I've seen the ramp contract at United because it's IAM, I
14 believe, they may or may not have mandatory overtime.

15 Most carriers that have chronic overtime problems have a
16 voluntary list, and what I've been told during negotiations is
17 about 90 percent of the voluntary lists for most work groups
18 absorbs the need for grabbing overtime from ground workers. So
19 I don't know if there's some unique situation where that
20 doesn't work and they have to mandatory people or if people
21 don't work overtime, but I think the ramp is kind of a specific
22 area.

23 Q. Well, let me ask: The ramp situation at Southwest
24 encountered in Denver that you just described, do you know what
25 Southwest did to deal with that situation?

1 A. Sure.

2 They went out there and essentially got a leaf blower full
3 of money and advertised jobs and said, we're going to hire
4 people because our operation at Denver is a critical part of
5 our network and it's not working because we don't have enough
6 people because there are other high paying jobs that rampers
7 are leaving to go to.

8 Q. And is that what you described earlier this morning in
9 your direct testimony? I think you mentioned they raised the
10 rate from \$7 an hour. Is that the same situation?

11 A. That's the situation, right. And, again, you know, my
12 experience is that prior to COVID, the \$15 an hour minimum wage
13 was a really big legislative issue. It's now turned into a
14 market issue.

15 The market supports that as a minimum now for the place I
16 ate at lunch, for bag handlers, you know, in Denver. So I
17 think there's been a real sea change in the sort of unskilled
18 lower level jobs at airlines, that they're having a harder time
19 keeping people generally.

20 Q. And to your knowledge, what Southwest did at Denver in
21 terms of raising the wage and hiring folks to staff that
22 operation appropriately, to your knowledge, did that address
23 the problem that Southwest was experiencing?

24 A. I think it did. I think it's calmed down. But, again, it
25 was a very gigantic problem, and a huge issue for Southwest

1 operations in Denver. I didn't see the kind of impact that
2 Southwest was having that other carriers may or may not have
3 had like United at Denver. But I know that working with
4 Southwest -- again, working with the unions at Southwest, that
5 this was a big issue and they were trying to solve it.

6 Q. Now, you testified just a moment ago on cross-examination
7 that short staffing on ramp could impact the traveling public.

8 Are there circumstances in which short staffing on ramp
9 would not actually impact the traveling public?

10 A. Right. And we'd be -- it would be invisible that all of
11 the bags got to the next flight later, you know, got on time
12 rather than being late, and that workers essentially doubled
13 down. Instead of having two folks in the bin loading bags,
14 there may be light bags and there's only one person needed, or
15 they may have been overstaffed for whatever reason, needing 15
16 people a shift and they had 17 there. So if they missed two
17 people from being sick, they're at their operating level.

18 But those kinds of jobs, again, are a little bit more
19 flexible in terms of being able to cover other employee's work
20 but there is a limit to that coverage.

21 Q. And is that what you were getting at a moment ago when you
22 testified about three workers doing the job of four on the ramp
23 in the way that one pilot cannot do the job of two in the
24 cockpit?

25 A. Right. And, again, if you look at Southwest workers, and

1 not to prejudice the airline against other airlines, but their
2 workers per head are doing more bag tossing than anybody per
3 head in the business. And that means their people are able to
4 do more with less.

5 So I'd imagine if United had a shortage, they would be
6 able to do more with less as well as.

7 Q. In your experience, that notion of rampers in particular
8 doing more with less, is that common, is that uncommon in the
9 industry?

10 A. I don't think it's uncommon. I think that's what they're
11 forced into, is when there's an issue with staffing, that they
12 have people doing more work than they otherwise would.

13 Q. And you were asked on cross-examination by Mr. Carroll
14 about circumstances in which an airline's offer of overtime may
15 not actually succeed in providing the staffing needs that the
16 airline is looking for. Did I get that right?

17 A. Yes.

18 Q. And is that true of all categories of ground employee,
19 other than the ramp that you spoke about?

20 A. I think it's true for mechanics. I'm not sure about the
21 dispatchers, but they're a critical part. So, you know, my
22 depth of knowledge here is what I've worked on most recently,
23 and I know the mechanics have a voluntary list for overtime,
24 not a mandatory list, at least at United. They have what I was
25 talking about earlier, is they're able to shift priorities,

1 that if they don't have enough folks to do what's called line
2 maintenance on airplanes that are broken at the gate that we
3 sometimes sit on, those folks come out of the hangar in trucks
4 with yellow lights and they probably are coming from a job in
5 the hangar, not sitting on a couch, and they're fixing things
6 that are sort of routine maintenance until they get called to
7 Gate 52 to check a vent or a valve or the hydraulics in an
8 engine.

9 You know, those things are fungible and they can make up
10 for people not showing up for work in those ways.

11 Q. Okay.

12 A. But from what I've heard, United has no problem with
13 mechanics attendance whatsoever. And, again, there's a
14 proclivity, for some reason, for mechanics to pick up open time
15 more willingly over time than other groups. It's easier to do.

16 Q. Okay. And so I think the way I phrased my question, the
17 way you phrased the beginning of your answer, you may have
18 cleared this up but I do want to be clear.

19 Is it your testimony that, say, United has any trouble
20 staffing the mechanics that it needs by offering overtime?

21 A. Everything I know about United and working with the
22 Teamsters on their last contract, they do not.

23 Q. They do not have that problem?

24 A. They don't have mandatory overtime and they do not have a
25 staffing problem anywhere in their system.

1 Q. Got it.

2 You also testified a little bit on cross-examination about
3 JetBlue's level of delays. Is it fair to say, sir, that among
4 the carriers operating out of Boston Logan Airport, JetBlue
5 tends to experience the highest percentage of delays?

6 A. That's right. And I think in response to plaintiff's
7 counsel's question, I'd kind of forgotten something that you
8 just jarred in my mind, that, when I did the weighted average
9 including JetBlue, in order to sort of assess my understanding
10 of what I was doing with the average average -- right? -- I
11 took JetBlue out and did another analysis weighting all the
12 carriers -- right? And it wasn't for the purposes that he
13 said. I just did it because I wanted to see how much of an
14 impact JetBlue had had on departure delays.

15 And I found that it dropped significantly without JetBlue
16 for the reason that JetBlue experiences 2.77 times the
17 departure delays related to carrier causes than the other four
18 carriers do on average.

19 Q. And of course --

20 MR. CARROLL: Objection to that testimony. Move to
21 strike, Your Honor. That's nowhere in this witness's expert
22 report.

23 THE COURT: Yeah. What's your basis for keeping that?

24 MR. HASKELL: The testimony about JetBlue's -- the
25 impact of removing JetBlue from the analysis? I do certainly

1 think it's relevant, Your Honor.

2 THE COURT: No, not removing it. Doing a weighted
3 analysis that's not included in his report.

4 MR. HASKELL: If it's not in his report, then it's not
5 in his report, Your Honor.

6 THE COURT: All right. I'm not going to strike it.
7 But I'm not going to consider it. I won't consider that
8 either.

9 MR. CARROLL: Thank you, Your Honor.

10 Q. What I do want to ask, Mr. Akins, is: It's your
11 understanding, as you sit here today, that JetBlue doesn't
12 comply with MESTL with respect to any of its employees in
13 Boston, right?

14 A. That's correct.

15 Q. Not flight attendants or pilots that are based here?

16 A. No.

17 Q. Not ground crew who work here?

18 A. Nope.

19 Q. And so it's -- it's not in your testimony that any of
20 those delays are caused by MESTL, is it?

21 A. No, they can't be because they don't comply with it.

22 Q. Okay.

23 MR. HASKELL: Nothing further.

24 MR. CARROLL: Nor here, Your Honor.

25 THE COURT: You're excused. Thank you.

1 THE WITNESS: Thank you.

2 MR. HASKELL: That, Your Honor, was our one and only
3 witness today.

4 THE COURT: What's the plan for tomorrow?

5 MR. HASKELL: So we have two witnesses in line for
6 tomorrow. We'll be ready to start whenever the court and
7 counsel and the court reporter are.

8 THE COURT: Well, I can start at 9:00. I have a
9 meeting at 8:15, but I'll be over pretty close to 9:00. So I
10 can start at 9:00, if you want, or we can -- how much time do
11 you think the two witnesses are going to fill?

12 MR. HASKELL: Between the two of them, I'd say it
13 would bring us about up until lunchtime, give or take.

14 THE COURT: Decide whether you want to -- I don't care
15 what time we start.

16 MS. NANDA: 9:00 is fine with us.

17 (Discussion with court reporter.)

18 THE COURT: Okay. Let's start at 9:00.

19 MR. HASKELL: Great.

20 THE COURT: So great. We will see everyone at 9:00.
21 The case is recessed today.

22 MR. HASKELL: Thank you.

23 MR. CARROLL: Thank you.

24 (Proceedings adjourned at 1:16 p.m.)

25

1 C E R T I F I C A T E
2
34 UNITED STATES DISTRICT COURT)
5 DISTRICT OF MASSACHUSETTS)
6
78 We certify that the foregoing is a correct transcript
9 from the record of proceedings taken September 20, 2022 in the
10 above-entitled matter to the best of our skill and ability.
11
12/s/ Kelly Mortellite13 Kelly Mortellite, RMR, CRR
14 Official Court Reporter
15
16/s/ Kathleen Mullen Silva9/20/2217 Kathleen Mullen Silva, RPR, CRR
18 Official Court Reporter
19
20
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22
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24
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Date